

WHAT SHOULD AMERICA DO ABOUT GUN VIOLENCE?

HEARING BEFORE THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE ONE HUNDRED THIRTEENTH CONGRESS FIRST SESSION

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WHAT SHOULD AMERICA DO ABOUT GUN VIOLENCE?

WEDNESDAY, JANUARY 30, 2013

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:12 a.m., in Room SH-216, Hart Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Feinstein, Schumer, Durbin, Whitehouse, Klobuchar, Franken, Coons, Blumenthal, Hirono, Grassley, Hatch, Sessions, Graham, Cornyn, Lee, Cruz, and Flake.

Chairman LEAHY. We have more than 200 people here today. Hundreds more are watching on our Committee Webcast. I expect everybody in this room to be respectful of the Senators and the witnesses speaking about this very serious subject. That means I do not want applause for or against any position I might take or anybody else takes. The Capitol Police have been notified to remove any audience member who interferes with the orderly conduct of this important hearing.

This, incidentally, is a warning I give at many hearings. We are going to hear a lot of different perspectives on gun violence, and both Senator Grassley and I will give opening statements. But we have a former Member of Congress here, Gabby Giffords, who is going to give a brief message, then leave. And, Captain Kelly, thank you for your help in bringing your wife here.

Ms. Giffords.

STATEMENT OF HON. GABRIELLE GIFFORDS, A FORMER REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Ms. GIFFORDS. Thank you for inviting me here today. This is an important conversation for our children, for our communities, for Democrats and Republicans.

Speaking is difficult but I need to say something important. Violence is a big problem. Too many children are dying. Too many children. We must do something. It will be hard, but the time is now. You must act. Be bold, be courageous. Americans are counting on you.

Thank you.

Chairman LEAHY. Captain Kelly, do you want to help Ms. Giffords out? I will give you a few moments.

[Pause.]

**OPENING STATEMENT OF HON. PATRICK J. LEAHY,
A U.S. SENATOR FROM THE STATE OF VERMONT**

Chairman LEAHY. We will return to the hearing, and I thank former Congresswoman Giffords and her husband. We will be calling up the witnesses shortly, and Senator Grassley and I will give our opening statements.

On December 14, America's heart was broken when 20 young children and 6 dedicated educators were murdered. This is the first Judiciary Committee hearing of the 113th Congress, and I want everybody here to join in the discussion as part of a collective effort to find solutions to help ensure that no family, no school, and no community ever has to endure such a grievous tragedy again.

We have to come together today as Americans seeking a common cause. I hope we can forgo sloganeering, demagoguery, and partisan recriminations. This is too important for that. Every American abhors the recent tragedies: in just the last 2 years, in an elementary school in Connecticut, in a movie theater in Colorado, in a sacred place of worship in Wisconsin, and in front of a shopping mall in Arizona.

Americans are looking to us for solutions and for action. This Committee is a focal point for that process. I have introduced a measure to provide law enforcement agencies with stronger tools against illegal gun trafficking. Others have proposed restrictions on military-style weapons and the size of ammunition clips. Others have proposed modifications to the background check systems to keep guns out of the wrong hands while not unnecessarily burdening law-abiding citizens.

I am a lifelong Vermonter. I know gun store owners in Vermont. They follow the law. They conduct background checks to block the conveyance of guns to those who should not have them. And they wonder why others who sell guns do not have to follow these same protective rules. And I agree with these responsible business owners. If we can all agree that criminals and those adjudicated as mentally ill should not buy firearms, why should we not try to plug the loopholes in the law that allow them to buy guns without background checks? It is a simple matter of common sense. And if we agree that the background check system is worthwhile, should we not try to improve its content and use it so it can be more effective? What responsible gun owner objects to improving the background check system?

When I buy firearms in Vermont, I go through a background check. I would expect everybody else to.

Now, at the outset of this hearing, I note that the Second Amendment is secure and will remain secure and protected. In two recent cases, the Supreme Court has confirmed that the Second Amendment, like other aspects of our Bill of Rights, secures a fundamental individual right. Americans have the right to self-defense and, as the Court has said, to have guns in their homes to protect their families. No one can take away those rights or their guns. Second Amendment rights are the foundation on which our discussion rests. They are not at risk. But what is at risk are lives. Lives are at risk when responsible people fail to stand up for laws that will keep guns out of the hands of those who will use them to commit murder, especially mass murder. I ask that we focus our dis-

cussion on additional statutory measures to better protect our children and all Americans. I say this as a parent and as a grandparent. Ours is a free society, an open society. We come together today to consider how to become a safer and more secure society.

No one begrudges the Government assistance provided to victims of mass tragedies made possible by the law we passed after the bombing at Oklahoma City. The bill I introduced last week against gun trafficking will similarly prove helpful and I believe will become an accepted part of our crime control framework. It, too, is a common-sense reform. It fills a hole in our law enforcement arsenal so that straw purchasers who acquire weapons for criminals can be prosecuted more effectively.

Last Thursday, the President nominated the U.S. Attorney from Minnesota—and we have two Senators from that State here on this Committee—to direct the Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives. And I trust that all Senators will cooperate in a prompt hearing and action on that nomination and will join in good faith to strengthen our law enforcement efforts against gun violence and to protect public safety.

As a responsible gun owner and someone who cherishes all of our constitutional rights, as a Senator who has sworn an oath to uphold those rights, as a father and grandfather, and as a former prosecutor who has seen the results of gun violence firsthand in graphic detail, I undertake these efforts with the hope that this hearing can build consensus around common-sense solutions. Previous measures to close the gun show loophole or to improve the background check system have been bipartisan. And I hope in this new Congress further improvements will also become bipartisan and we can act together as Americans.

Now, I have said what kinds of measures I can support. I will ask other Senators to come forward and do so as well. I will ask our witnesses what legislative proposals they support to make America safer, and I thank everybody here for joining in today's discussion.

Senator Grassley.

**OPENING STATEMENT OF HON. CHUCK GRASSLEY,
A U.S. SENATOR FROM THE STATE OF IOWA**

Senator GRASSLEY. Mr. Chairman, I thank you as well for this hearing, and thanks to everybody who is here, and particularly our witnesses.

What happened at Newtown shocks our Nation. We will never forget where we were or how we reacted when we learned that 20 very young children and 6 adults were killed that day; or if we forgot about that specific instance, you do not forget about all the tragedies that have happened recently.

As a grandfather and great-grandfather, I cannot imagine how anyone would commit an evil act like that, and I cannot ever begin to know what it would be like to be a relative of one of those slain children. We pray for the families who continue to mourn the loss of loved ones. We pray for all victims of violence, by guns and otherwise.

Clearly, violent crimes and those who commit them are a plague on our society, one that has been with us for far too long. We have

looked at these issues before, but I welcome this renewed discussion.

I think the need for the Judiciary Committee to hold hearings after Newtown is very clear. All over America, people were appalled by what happened to those vulnerable and precious victims, and we all want to examine sensible actions that could reduce the likelihood of future crimes.

And we have extended a special welcome to former Congresswoman Giffords. She was doing what a conscientious Representative should do, what I hope all of us do: taking the pulse of constituents to represent them in Congress. She was representing the people of her congressional district when a gunman opened fire. The shooting was a horrible tragedy. But her determination to overcome her injuries, progress through rehabilitation, and continued contribution to society are an inspiration or at least should be an inspiration to all of us. I thank her for being here today, and with her husband, Captain Kelly.

Although Newtown and Tucson are terrible tragedies, the deaths in Newtown should not be used to put forward every gun control measure that has been floating around for years because the problem is greater than just guns alone, and I think the Chairman's speech indicates that as well. Any serious discussion of the causes of gun violence must include a complex re-examination of mental health as it relates to mass shootings. Society as a whole has changed as well, and that statement is made. It is difficult for anyone to measure it, but I think you see a lack of civility in American society has grown considerably in the last couple decades. You see it here in the Congress as well when we are partisan and do not treat each other with the respect that we ought to.

There are too many video games that celebrate the mass killing of innocent people, games that, despite attempts at industry self-regulation, find their way into the hands of children. An example: One video game released November 2009, which has sold over 22 million copies in the U.S. and U.K., was for foreign distribution because the opening level depicted shooting innocent civilians in an airport security line. This game was specifically cited in the manifesto of the Norway mass shooter as "part of my training simulation" for carrying out his attacks.

Where is the artistic value of shooting innocent victims? I share Vice President Biden's disbelief of manufacturer denial that these games have no effect on real-world violence.

Above all, we should not rush to pass legislation that will not reduce mass killings. Banning guns based on their appearance does not make sense. The 1994 assault weapon ban did not stop Columbine. The Justice Department found the ban ineffective. Scholars have indicated that refining or expanding such legislation will not cut gun violence.

I also question the limitation on magazine capacities. Those can be circumvented by carrying multiple guns, as many killers have done. We hear that no one needs to carry larger magazines than those that hunters use to shoot deer. But an attacking criminal, unlike a deer, shoots back. I do not think that we may—I do think that we may be able to work together to prevent straw purchasers from trafficking in guns.

The oversight work that I conducted on the illegal Operation Fast and Furious shows that there are some gaps in this area of law that should be closed. Besides legislative proposals, the President recently took 23 Executive actions on guns, and without knowing exactly how they are worded, we cannot find fault with them, and probably should not find fault with a lot of his actions. Despite this administration's claim to be the most transparent in history, the text of these actions is still not posted on the White House website, only very brief statements about what they do. But all of those Executive actions could have been issued 4 years ago or after the Tucson shooting or after Aurora. Why only now?

One order directs the Centers for Disease Control to research causes of gun violence. Contrary to what you may have heard, Congress has never prohibited CDC from researching gun violence; rather, Congress prohibited Federal research to "advocate or promote gun control," which some Government researchers have been doing under the guise of taxpayer-supported science. Had Congress actually prohibited gun violence research, the President could not legally have directed CDC to conduct that research.

I was taken aback when the President cited the Declaration of Independence and the Constitution as sources of Government power to restrict gun ownership rights. The Constitution, in fact, creates a limited Federal Government. It separates powers among branches of the Federal Government, and it preserves State power against Federal power. The Framers believed that these structures would adequately control the Government so as to protect individual liberty.

But the American people disagreed. They feared that the Constitution gave the Federal Government so much power that it could be tyrannical and violate individual rights. So the Bill of Rights was added. Each of those rights, including the Second Amendment, was adopted to further limit Government power and protect individual rights. President Obama's remarks turned the Constitution on its head. He said, "The right to worship freely and safely, that right was denied to Sikhs in Oak Creek, Wisconsin. The right to assemble peaceably, that right was denied shoppers in Clackamas, Oregon, and moviegoers in Aurora, Colorado. That most fundamental set of rights to life, liberty, and the pursuit of happiness are fundamental rights that were denied to college students at Virginia Tech and high school students at Columbine and elementary school students in Newtown."

But this is not so. Except for its prohibition on slavery, the Constitution limits only actions of Government, not individuals. So, for instance, the right to peaceably assemble protects individual rights to organize, to protest, and seek to change Government action. That right is trivialized and mischaracterized as protecting shopping and watching movies, and those constitutional rights are not the source of governmental power to enact legislation as the President suggested. In fact, just the opposite. They were included in the Bill of Rights because throughout history governments have wanted to shut up those who would criticize government to suppress unpopular religions or to disarm people. The President cited constitutional protections of individual rights as the basis for expanding Federal power over the lives of private individuals. This

is the same President who exceeded his power under the Constitution to appoint recess appointments. So no wonder millions of Americans fear that the President might take Executive action and Congress may enact legislation that could lead to a tyrannical Federal Government.

So I cannot accept the President's claim that "there will be politicians and special interest lobbyists publicly warning of a tyrannical all out assault on liberty, not because that is true but because they want to gin up fear." This necessarily and understandably leads many citizens to fear that their individual rights will be violated, and that extends well beyond the Second Amendment. It should be a matter of deep concern to all of us. The Constitution for 225 years has established a Government that is a servant of the people, not the master.

So, Mr. Chairman, as we consider and debate legislation arising from these tragedies, I hope that we will proceed with proper understanding of the relationship that the Constitution establishes between Government power and individual liberty, and I hope we will pass those bills that would actually be effective in reducing gun violence.

I welcome the witnesses and look forward to this hearing. Thank you very much.

Chairman LEAHY. Well, thank you.

I would ask that Captain Mark Kelly, Professor David Kopel, Chief James Johnson, Ms. Gayle Trotter, and Mr. Wayne LaPierre step forward. Just stand behind your chairs for the moment while I swear in the panel all at one time. Please raise your right hand. Do you solemnly swear that the testimony you will give in this matter will be the truth, the whole truth, and nothing but the truth, so help you God?

Captain KELLY. I do.

Professor KOPEL. I do.

Chief JOHNSON. I do.

Ms. TROTTER. I do.

Mr. LAPIERRE. I do.

Chairman LEAHY. Let the record show that all five witnesses have been sworn in. Please take your seats.

What I am going to suggest we do, I am going to call on each witness—we are going to try to keep to fairly strict time, and I will call on each one to give their testimony. Then we will open it to questions in the usual way, alternating between both sides.

Our first witness is Mark Kelly. He is a retired astronaut and U.S. Navy captain. Captain Kelly recently co-founded Americans for Responsible Solutions. This is an advocacy group that promotes solutions to prevent gun violence and protect responsible gun ownership. He did it with his wife, former Congresswoman Gabrielle Giffords.

Captain Kelly, please go ahead, sir.

**STATEMENT OF CAPT. MARK E. KELLY, UNITED STATES NAVY,
RETIRED, AMERICANS FOR RESPONSIBLE SOLUTIONS,
TUCSON, ARIZONA**

Captain KELLY. Thank you, Chairman Leahy and Ranking Member Grassley, for inviting me here today. I look forward to a con-

structive dialogue with your Committee. I also want to take the opportunity to congratulate Gabby's friend and much respected former colleague, Jeff Flake, on his new role as Arizona's junior Senator.

As you know, our family has been immeasurably affected by gun violence. Gabby's gift for speech is a distant memory. She struggles to walk, and she is partially blind. And a year ago she left a job she loved serving the people of Arizona.

But in the past 2 years, we have watched Gabby's determination, spirit, and intellect conquer her disabilities.

We are not here as victims. We are speaking to you today as Americans.

We are a lot like many of our fellow citizens following this debate about gun violence:

We are moderates. Gabby was a Republican long before she was a Democrat.

We are both gun owners, and we take that right and the responsibilities that come with it very seriously.

And we watch with horror when the news breaks to yet another tragic shooting. After 20 kids and 6 of their teachers were gunned down in their classrooms at Sandy Hook, Elementary, we said this time must be different. Something needs to be done.

We are simply two reasonable Americans who have said, "Enough."

On January 8, 2011, a young man walked up to Gabby at her constituent event in Tucson, leveled his gun, and shot her through the head. He then turned down the line and continued firing. In 15 seconds, he emptied his magazine. It contained 33 bullets, and there were 33 wounds.

As the shooter attempted to reload, he fumbled. A woman grabbed the next magazine, and others restrained him.

Gabby was the first victim. Christina-Taylor Green, 9 years old, born on 9/11 of 2001, was shot with the 13th bullet or after. And others followed.

The killer in the Tucson shooting suffered from severe mental illness. But even after being deemed unqualified for service in the Army and expulsion from Pima Community College, he was never reported to mental health authorities.

On November 30, 2010, he walked into a sporting goods store, passed a background check, and walked out with a semiautomatic handgun. He had never been legally adjudicated as mentally ill, and even if he had, Arizona at the time had over 121,000 records of disqualifying mental illness that it had not submitted into the system.

Looking back, we cannot say with certainty, "Only if we had done this, this would have never happened." There is not just one thing that would have prevented the Tucson shooting from being written into the history books.

Gabby is one of roughly 100,000 victims of gun violence in America each and every year. Behind every victim lays a matrix of failure and inadequacy—in our families, in our communities, in our values; in our society's approach to poverty, violence, and mental illness; and, yes, also in our politics and in our gun laws.

One of our messages is simple: The breadth and complexity of gun violence is great, but it is not an excuse for inaction.

There is another side to our story.

Gabby is a gun owner, and I am a gun owner. We have our firearms for the same reasons that millions of Americans just like us have guns: to defend ourselves, to defend our families, for hunting, and for target shooting.

We believe wholly and completely in the Second Amendment and that it confers upon all Americans the right to own a firearm for protection, collection, and recreation.

We take that right very seriously, and we would never, ever give it up—just like Gabby would never relinquish her gun, and I would never relinquish mine.

But rights demand responsibility. And this right does not extend to terrorists, it does not extend to criminals, and it does not extend to the mentally ill.

When dangerous people get guns, we are all vulnerable—at the movies, at church, conducting our everyday business, meeting with a Government official; and time after time after time, at school, on our campuses, and in our children's classrooms.

When dangerous people get dangerous guns, we are all the more vulnerable. Dangerous people with weapons specifically designed to inflict maximum lethality upon others have turned every single corner of our society into places of carnage and gross human loss.

Our rights are paramount. But our responsibilities are serious. And as a Nation, we are not taking responsibility for the gun rights that our Founding Founders conferred upon us.

Now, we have some ideas on how we can take responsibility.

First, fix gun background checks. The holes in our laws make a mockery of the background check system. Congress should close the private sales loophole and get dangerous people entered into that system.

Second, remove the limitations on collecting data and conducting scientific research on gun violence.

Enact a tough Federal gun-trafficking statute. This is really important.

And, finally, let us have a careful and civil conversation about the lethality of firearms we permit to be legally bought and sold in this country.

Gabby and I are pro-gun ownership. We are also anti-gun violence, and we believe that in this debate Congress should look not toward special interests and ideology, which push us apart, but toward compromise, which brings us together. We believe whether you call yourself pro-gun or anti-gun violence, or both, that you can work together to pass laws that save lives.

Thank you.

[The prepared statement of Capt. Mark E. Kelly appears as a submission for the record.]

Chairman LEAHY. Thank you.

Our next witness, David Kopel, is the research director for the Independence Institute as well as an associate policy analyst for the Cato Institute and adjunct professor of Advanced Constitutional Law at Denver University's Strum College of Law.

Did I get that all correct?

Professor KOPEL. Perfect.

Chairman LEAHY. Thank you. Go ahead, please.

**STATEMENT OF DAVID B. KOPEL, ADJUNCT PROFESSOR,
ADVANCED CONSTITUTIONAL LAW, DENVER UNIVERSITY,
STRUM COLLEGE OF LAW, DENVER, COLORADO**

Professor KOPEL. Thank you, Chairman Leahy and Senator Grassley.

I think to continue the themes that Captain Kelly has so eloquently spoken about, gun rights and gun control do not have to be culture war enemies. Properly conceived, they can work together and reinforce each other. It is important to recognize that the Second Amendment is not absolute any more than the First Amendment is. It certainly has an absolute core that cannot be violated under any circumstances, but that does not prohibit all firearms controls.

Chairman LEAHY. Excuse me, and this will not come out of your time.

Professor KOPEL. Okay.

Chairman LEAHY. All of the statements will be put in the record in full so we can keep close to the time.

Go ahead.

Professor KOPEL. Thank you. I will keep very close to the time.

And, likewise, gun controls do not violate the Second Amendment if they are constructed so they do not violate the rights of law-abiding citizens and they actually do something constructive, significant, and effective to protect law-abiding citizens.

Captain Kelly talked about the matrix of failure. Twenty years ago, I testified before this Committee—some of the Senators are still here—about one thing that turned out to be part of that matrix of failure, and that was the ban on so-called assault weapons. I warned during that testimony then that it was based not on the function of guns or how fast they fired or how powerful they were, but on superficial, cosmetic characteristics and accessories.

As part of the compromise that eventually led to that bill being mistakenly passed by Congress, the bill had a 10-year sunset in it and a requirement that the Department of Justice supervise a study of the effectiveness of that law. That study was—the people that carried out that study were chosen by Attorney General Reno's Department of Justice. They did several interim studies and then a final study, and they concluded that the law had done nothing. It had not saved lives; it had not reduced the number of bullets that were fired in crimes. It had been a failure. It had, to some minor degree, switched the types of guns that were used in crimes, so you had a gun with one name instead of another name. But it did not reduce crime overall. And, indeed, it was a dangerous bill in the sense that so much political attention was distracted by the focus on this that it took public attention away from debate on measures that might have been more constructive and life-saving.

Today, police and law-abiding citizens choose semiautomatic handguns and rifles, such as the AR-15, for the same reason. They are often the best choice for the lawful defense of self and others. To assert that such firearms and their standard capacity factory magazines are only meant for mass murder is truly to libel law-

abiding citizens and the many law enforcement officers who choose these guns not for hunting, not for collecting, but for the purpose for which police officers always carry firearms: for the lawful defense of self and others.

Great Britain shows the perils of mass gun confiscation that some people have proposed. It has a higher violent crime rate than the United States and an especially high rate of home invasion burglaries.

Congress has repeatedly outlawed gun registration because of the accurate recognition that in other countries, and in the United States, in New York City, gun registration has been used as a tool for confiscation. These 1941, 1986, and 1993 congressional statutes are one way that gun rights can be protected against future abuses.

Unfortunately, the bills about universal background checks that have been proposed in recent Congresses with the support of New York City Mayor Michael Bloomberg have often had provisions in them for gun registration and for many other violations of the civil liberties of law-abiding persons, such as allowing gun bans for people who are accused, but acquitted, of drug crimes.

Universal background checks should be available. It was a wise move by President Obama in his January 16th press conference to begin changes in Federal regulations and their interpretation to allow private sellers to access the background check system via a federally licensed firearms dealer. Many people will choose to take advantage of that, and I commend them. But mandating universal checks can only be enforceable if there is universal gun registration, and we know that universal gun registration in every country in the world where it has existed has been a serious peril to gun ownership. Universal gun registration was imposed by Canada in 1995 and was later repealed in 2012 by the Canadian parliament because it was such a fiasco.

If we want to save lives right now, not with constructive reforms that might do some good in the future, there is only one thing that will stop the next copycat killer, and that is, lawful armed self-defense in the schools not only by armed guards but also by teachers. Utah provides the successful model. There, a teacher who has a permit to carry after a background check and a safety training class everywhere else in the State is not prohibited from carrying at the schools. Gun prohibition lobbies come up with all kinds of fantastic scenarios about the harms that these would cause: teachers will shoot each other or threaten students or the students will steal the guns. But we have had this policy and practice in Utah for many years, and we have never had a single problem. And, quite notably, we have never had an attack on a Utah school. If we want to save lives, armed defense in the schools is the immediate and best choice while other constructive solutions make take longer to have an effect.

Thank you.

[The prepared statement of Prof. David B. Kopel appears as a submission for the record.]

Chairman LEAHY. Thank you very much. As I said, your full statement will be placed in the record.

Chief James Johnson is the police chief for the Baltimore County Police Department. He started his career as a police cadet at the

age of 18. He has more than 30 years of experience with the department. He is also the Chair of the National Law Enforcement Partnership to Prevent Gun Violence that represents nine national law enforcement organizations.

Chief, thank you for taking the time to be here. Please go ahead, sir.

STATEMENT OF JAMES JOHNSON, CHIEF OF POLICE, BALTIMORE COUNTY POLICE DEPARTMENT, AND CHAIR, NATIONAL LAW ENFORCEMENT PARTNERSHIP TO PREVENT GUN VIOLENCE, TOWSON, MARYLAND

Chief JOHNSON. Thank you. Mr. Chairman, Ranking Member, and Members of the Committee, thank you for the opportunity to testify. I am here on behalf of the National Law Enforcement Partnership to Prevent Gun Violence—

Chairman LEAHY. Is your microphone on?

Chief JOHNSON. Yes, sir, it is.

I am here on behalf of the National Law Enforcement Partnership to Prevent Gun Violence, an alliance of the Nation's law enforcement leadership organizations concerned about the unacceptable level of gun violence in the United States.

We mourn the loss of gun violence victims, including the 20 children and 6 adults in Newtown whose lives were cut short by an individual armed with firepower originally designed for combat.

More than 30 homicides occur in America each day. Two thousand children—and 6 adults certainly in Newtown, are amongst those individuals—ages 18 and under die of firearm-related violence and deaths every year. In 2011, for the first time in 14 years, firearms were the leading cause of death for police officers killed in the line of duty.

In a 1-week period in 2011, the Police Executive Research Forum found that gun crime in six cities cost more than \$38 million, and in the year 2010 the cost to the entire country more than \$57 billion.

We urgently need Congress to address the rising epidemic of gun violence in this Nation. Law enforcement leaders support the President's comprehensive approach, which includes enhancing safety at educational institutions and addressing mental health issues. But on behalf of my colleagues across the Nation, I am here today to tell you that we are long overdue in strengthening our Nation's gun laws. Doing so must be a priority for Congress.

The organizations in the National Law Enforcement Partnership to Prevent Gun Violence urgently call on you to:

Require background checks for all firearm purchasers;

Ensure that prohibited purchaser records in the National Instant Criminal Background Check System (NICS) are complete;

And limit high-capacity ammunition feeding devices to ten rounds.

Seven of our nine groups, including the largest among us, also support Senator Feinstein's assault weapons ban legislation.

Federal law prohibits dangerous individuals, such as convicted felons and those with mental health disqualifiers, from possessing firearms. While background checks are required for purchases through licensed gun dealers, no check is required for private sales,

such as those through online or print ads or gun shows. It is a major problem.

From November 2011 to November 2012, an estimated 6.6 million gun transactions occurred without a background check. Up to 40 percent of firearm transactions occur through private individuals rather than licensed gun dealers. Allowing 40 percent of those acquiring guns to bypass checks is like allowing 40 percent of passengers to board a plane without going through security. Would we do this?

Last October, in Brookfield, Wisconsin, seven women were shot by a prohibited purchaser who was under a domestic violence restraining order. The shooter answered an online ad and was able to buy a gun without a check very quickly. Had the sale been required to have a check, this tragedy could have been prevented.

Background checks work. They stopped nearly 2 million prohibited purchases between 1994 and 2009. We already have a national background check system in place. Therefore, extending background checks to all firearm purchasers can easily be implemented—and it should be—without delay.

States cannot do it alone. Interstate firearms trafficking is a rampant problem, and it must be addressed federally. According to ATF, in 2009, 30 percent of guns recovered at crime scenes crossed State lines. Maryland recovered nearly 2,000 last year from outside the State.

Submissions to NICS must be improved, especially mental health and drug abuse records. The 2007 massacre at Virginia Tech is a great example of a prohibited purchaser slipping through the cracks due to an incomplete NICS background check.

The ban on assault weapons and high-capacity ammunition must be reinstated. Like assault weapons, high-capacity magazines are not used for hunting. They do not belong in our homes, and they wreak havoc in our communities. Banning these magazines will limit the number of rounds a shooter can discharge before he has to reload. Reloading can provide a window to escape, to seek cover or concealment, or attack the adversary, to take down the shooter, as we have heard in Tucson.

In 1998, 4 years after the assault weapons and high-capacity magazine ban was enacted, the percentage of firearms with large-capacity magazines recovered by Virginia police decreased and continued to drop until it hit a low of 9 percent of the weapons recovered in 2004, the year the ban expired. It hit a high of 20 percent in 2010.

I have been in law enforcement for nearly 35 years, and I have seen an explosion in firepower since the assault weapons ban expired. It is common to find many shell casings at crime scenes when you go out and you investigate these days. Victims are being riddled with multiple gunshots.

The common-sense measures we call for will not infringe on Second Amendment rights, but will keep guns out of the dangerous hands of people who are out there to commit danger in our society, and excessive firepower out of our communities.

Generations of Americans, including our youngest ones, are depending on you to ensure they will grow up and fulfill their roles in the great human experience. None of us can fail them, and I

urge you to follow the will of the American public on this issue and stand with law enforcement on these common-sense public safety measures.

Thank you.

[The prepared statement of Chief James Johnson appears as a submission for the record.]

Chairman LEAHY. Thank you, Chief.

Our next witness is Gayle Trotter. She is the co-founder of Shafer and Trotter PLC, a law firm here in Washington. She is also a senior fellow at the Independent Women's Forum.

Attorney Trotter, good to have you here. Go ahead, please.

STATEMENT OF GAYLE S. TROTTER, ATTORNEY, AND SENIOR FELLOW, INDEPENDENT WOMEN'S FORUM, WASHINGTON, DC

Ms. TROTTER. Chairman Leahy, Ranking Member Grassley, and Members of this Committee, thank you for inviting me to appear before you today.

We all want a safer society. We differ on how to make our society safer, and we differ on whether some proposals will actually increase public safety. I urge you to reject any actions that will fail to make Americans safer and, in particular, harm women the most.

I would like to begin with the compelling story of Sarah McKinley. Home alone with her baby, she called 911 when two violent intruders began to break down her front door. These men were forcing their way into her home to steal the prescription medication of her recently deceased husband. Before police could arrive, while Ms. McKinley was still on the phone with 911, these violent intruders broke down her door. One of the men had a foot-long hunting knife. As the intruders forced their way into her home, Ms. McKinley fired her weapon, fatally wounding one of the violent attackers. The other fled. Later, Ms. McKinley explained: "It was either going to be him or my son. And it wasn't going to be my son."

Guns make women safer. Over 90 percent of violent crimes occur without a firearm, which makes guns the great equalizer for women. The vast majority of violent criminals use their size and their physical strength to prey on women who are at a severe disadvantage.

In a violent confrontation, guns reverse the balance of power. An armed woman does not need superior strength or the proximity of a hand-to-hand struggle. Concealed-carry laws reverse that balance of power even before a violent confrontation occurs. For a would-be criminal, concealed-carry laws dramatically increase the risk of committing a crime. This indirectly benefits even those who do not carry. Research shows that in jurisdictions with concealed-carry laws, women are less likely to be raped or murdered than they are in States with more restrictions on gun ownership.

Armed security works. Brave men and women stand guard over Capitol Hill, including this building where we are now. Armed guards protect high-profile individuals, including prominent gun control advocates, some of whom also rely on personal gun permits.

While armed security works, gun bans do not. Anti-gun legislation keeps guns away from the sane and the law-abiding, but not criminals. No sober-minded person would advocate a gun ban in-

stead of armed security to protect banks, airports, or government buildings.

We need sensible enforcement of the laws that are already on the books. Currently, we have thousands—thousands—of under-enforced or selectively enforced gun laws, and we fail to prosecute serious gun violations or impose meaningful, consistent penalties for violent felonies involving firearms.

Instead of self-defeating gestures, we should address gun violence based on what works. Guns make women safer. The Supreme Court has recognized that lawful self-defense is a central component of the Second Amendment's guarantee of the right to keep and bear arms. For women, the ability to arm ourselves for our protection is even more consequential than for men because guns are the great equalizer in a violent confrontation. As a result, we protect women by safeguarding our Second Amendment rights. Every woman deserves a fighting chance.

Thank you.

[The prepared statement of Gayle S. Trotter appears as a submission for the record.]

Chairman LEAHY. Thank you very much, Ms. Trotter.

And our last witness—and then we will go to questions—is Wayne LaPierre, the executive vice president and CEO of the National Rifle Association.

I believe, Mr. LaPierre, you have been there since 1978. Is that correct?

Mr. LAPIERRE. That is correct, Senator.

Chairman LEAHY. Please go ahead.

STATEMENT OF WAYNE LAPIERRE, EXECUTIVE VICE PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATIONAL RIFLE ASSOCIATION, FAIRFAX, VIRGINIA

Mr. LAPIERRE. Thank you, Mr. Chairman and Members of the Committee. It is an honor to be here today on behalf of more than 4.5 million moms and dads, sons and daughters—

Chairman LEAHY. Is your microphone on?

Mr. LAPIERRE. Thank you, Mr. Chairman. It is an honor to be here today on behalf of the more than 4.5 million moms and dads, sons and daughters, in every State across our Nation, who make up the National Rifle Association of America. There are 4.5 million active members of the NRA, and they are joined by tens of millions of supporters throughout the country.

It is on behalf of those millions of decent, hard-working, law-abiding citizens that I am here today to give voice to their concerns.

The title of today's hearing is "What Should America Do About Gun Violence?" We believe the answer to that question is to be honest about what works and honest about what does not work.

Teaching safe and responsible gun ownership works, and the NRA has a long and proud history of doing exactly that.

Our "Eddie Eagle" child safety program has taught 25 million young children that if they see a gun, they should do four things: "Stop. Do not touch it. Leave the area. And call an adult." As a result of this and other private sector programs, fatal firearm accidents are at the lowest levels in more than 100 years.

The NRA has over 80,000 certified instructors who teach our military personnel, law enforcement officers, and hundreds of thousands of other American men and women how to safely use firearms. We do more—and spend more—than anyone else on teaching safe and responsible gun ownership.

We joined the Nation in sorrow over the tragedy that occurred in Newtown, Connecticut. There is nothing more precious than our children. And we have no more sacred duty than to protect our children and to keep them safe. That is why we asked former Congressman and Under Secretary of Homeland Security, Asa Hutchinson, to bring in every available expert to develop a model School Shield Program—one that can be individually tailored to make our schools as safe as possible.

It is time to throw an immediate blanket of security around our children. About a third of our schools right now have armed security already—because it works—and that number is growing every day. Right now, State officials, local authorities, and school districts in all 50 States are considering their own plans to protect children in schools.

In addition, we need to enforce the thousands of gun laws already on the books. Prosecuting criminals who misuse firearms works. Unfortunately, we have seen a dramatic collapse in Federal gun prosecutions in recent years. Overall in 2011, Federal weapons prosecutions per capita were down 35 percent from their peak in the previous administration. That means violent felons, violent gang members, and drug dealers with guns and the mentally ill who possess firearms are not being prosecuted. And that is completely and totally unacceptable.

And out of more than 76,000 firearms purchases supposedly denied by the Federal instant check system, only 62 were referred for prosecution and only 44 were actually prosecuted. Proposing more gun laws, while failing to enforce the thousands we already have, is not a serious solution for reducing crime.

I think we can also agree that our mental health system is broken. We need to look at the full range of mental health issues, from early detection and treatment, to civil commitment laws, to privacy laws that needlessly prevent mental health records from being included in the National Instant Criminal Background Check System.

While we are ready to participate in a meaningful effort to solve these pressing problems, we must respectfully—but honestly and firmly—disagree with some Members of the Committee, many in the media, and all of the gun control groups on what will keep our kids and keep our streets safe.

Law-abiding gun owners will not accept blame for the acts of violent or deranged criminals. Nor do we believe the Government should dictate what we can lawfully own and use to protect our families.

As I said earlier, we need to be honest about what works and what does not work. Proposals that would only serve to burden the law-abiding have failed in the past and will fail in the future.

Semiautomatic firearms have been around for over 100 years. They are among the most popular guns for hunting, target shooting, and self-defense. Despite this fact, Congress banned the manu-

facture and sale of hundreds of semiautomatic firearms and magazines from 1994 to 2004. Independent studies, including one from the Clinton Justice Department, proved that it had no impact on lowering crime.

And when it comes to background checks, let us be honest. Background checks will never be universal because criminals will never submit to them.

But there are a lot of things that can be done, and we ask you to join with us. The NRA is made up of millions of Americans who support what works ... the immediate protection for all—not just some—of our school children; swift, certain punishment of criminals who misuse guns; and fixing our broken mental health system.

We love our families. We love our country. We believe in our freedom. We are the millions from all walks of life who take responsibility for our safety and protection as a God-given, fundamental American right.

Thank you, Mr. Chairman.

[The prepared statement of Wayne LaPierre appears as a submission for the record.]

Chairman LEAHY. Thank you.

Now, Chief Johnson, let me begin with you, sir, if I could. I find in my experience that many criminals are able to get guns illegally because they use straw purchasers. In other words, a person who has no criminal record, can easily pass a background check, goes in and buys the guns, then turns around and gives them to criminals.

But there is no Federal law that makes it illegal to act as a straw purchaser of firearms. So last week, I introduced a bill that will strengthen Federal law to combat firearms trafficking. It would specifically target straw purchasers.

Do you think there should be such a law?

Chief JOHNSON. The background procedures in this Nation are seriously in need of modification. Again, 40 percent of those acquiring firearms try to do it outside that background procedure.

Senator, you are absolutely correct. Many will use a straw purchaser to go in and acquire these firearms. It happens each and every day across America. It is a serious problem. And the National Law Enforcement Partnership to Prevent Gun Violence supports your initiative to address that issue.

Chairman LEAHY. Thank you, Chief.

We also heard testimony about the safety of women and gun violence. Now, I am seeking immediate consideration of the Leahy-Crapo Violence Against Women Reauthorization Act. I was told yesterday that sometime in the next couple weeks we will have it on the floor of the Senate for a vote. I do this because of concern for domestic violence victims. We have statistics that show women in this country are killed at an alarming rate by domestic abusers with guns.

Unfortunately, if a woman has a protective order against her abuser, if he is able to get a gun through a straw purchaser, of course, he still gets it, but he is not going to be able to purchase a gun if a background check is conducted. And we have at least one study that says that in States that require a background check for

every handgun sale, 38 percent fewer women are shot to death by their partners.

Now, do you agree that if we want to keep firearms away from domestic abusers who are not supposed to have them anyway, we have to improve the background check system and require a background check for every firearm purchaser?

Chief JOHNSON. Absolutely. I would like to stand in front of this group today and say I have spent my years chasing down violent armed robbers each and every day. The fact of the matter is that as a young patrol officer, most of my day was one domestic to another. It was the post that I had. Statistics show that when females are killed, it is more likely, over 50 percent of the time, to be by a spouse or household member. A gun in a home where there is a history of domestic violence, statistics show that there is a 500-percent increase or chance that that person will be victimized by gun violence.

The State of Maryland in the last several years enacted legislation to address this domestic violence issue to allow us to go out and seize the guns of domestic violence abusers where the spouses went and obtained a protective order. This has been very effective, and in my jurisdiction, which averages generally about 35 homicides a year—unfortunately, most being domestic violence related—this had a significant impact in reducing the amount of those domestics. Two of the last 3 years, the statistic was below the 41-year homicide rate, and I credit in this case the Lieutenant Governor of the State of Maryland, Lieutenant Governor Brown, for this initiative, and it has helped us tremendously.

Chairman LEAHY. Thank you.

Captain Kelly, Mr. LaPierre has testified that universal background checks would not work because criminals would never submit to them, and I understand that. But under current law, criminals do not have to go through background checks because there are so many loopholes—the gun show loophole, no real punishment for straw purchases.

Do you agree that there is nothing we can do to strengthen our background checks?

Captain KELLY. Chairman Leahy, I disagree. I mean, there is a lot we can do. The situation that I know best is what happened in Tucson on January 8th of 2011. Jared Loughner, the shooter in this case, when he purchased a gun, he did purchase it through a background check. But there was a lot of evidence that could possibly have been in the National Instant Criminal Background Check System about him that would have prevented him from buying a gun through a background check. So that is part of the solution.

Now, the other problem, let us say he was denied, denied the purchase of the gun, which he purchased in November 2010. It would have been very easy for him to go to a gun show and purchase a gun without a background check.

So, you know, there are several things that need to be done, and in my opinion and in Gabby's opinion, this was one of the most important things that we must do to prevent criminals, terrorists, and the mentally ill from having easy access to guns. Closing the gun show loophole and requiring private sellers to require a background check before they transfer a gun is—for us, I mean, I cannot think

of something that would make our country safer than doing just that.

Chairman LEAHY. Thank you.

Mr. LaPierre, in 1999, you testified before the House Judiciary Committee, and you testified, "Nobody is more committed than we are to keeping guns out of criminals' hands. That is obviously in our best interest."

I assume you are still just as committed to keeping guns out of the hands of criminals. Is that correct?

Mr. LAPIERRE. Yes, sir.

Chairman LEAHY. And would you agree that we should prosecute and punish those who help criminals get guns?

Mr. LAPIERRE. If you are talking about straw man sales, we have said straw man sales should be prosecuted for years. There are about six to eight statutes on the books right now—

Chairman LEAHY. So you agree that we should prosecute and punish those who help criminals get guns?

Mr. LAPIERRE. If someone is doing a straw man sale, they should be prosecuted, absolutely.

Chairman LEAHY. Now, in your testimony in 1999, you supported mandatory instant criminal background checks for every sale at every gun show. You said, "No loopholes anywhere for anyone." Now, today, of course, you said criminals would never submit to background checks. Statistics show that plenty of them do. Nearly 2 million convicted criminals and other dangerous people tried to buy a firearm since 1994, as Chief Johnson said, and were prevented.

So let me ask you this: Do you still, as you did in 1999, support mandatory background checks at gun shows? Yes or no.

Mr. LAPIERRE. We supported the National Instant Check System on dealers. We were here when Senator Birch Bayh, one of your colleagues, held hearings in terms of who would be a dealer and who would be required to have a license. If you did it for livelihood and profit, yes; if you were a hobbyist, no.

Chairman LEAHY. Let us make it easier, though. I am talking about gun shows. Should we have mandatory background checks at gun shows for sales of weapons?

Mr. LAPIERRE. If you are a dealer, that is already the law. If you are talking—

Chairman LEAHY. That is not my question. Please, Mr. LaPierre. I am not trying to play games here, but if you could answer, it would help. Just answer my question.

Mr. LAPIERRE. Senator, I do not believe the way the law is working now, unfortunately, that it does any good to extend the law to private sales between hobbyists and collectors.

Chairman LEAHY. Okay. So you do not support mandatory background checks in all instances at gun shows.

Mr. LAPIERRE. We do not, because the fact is the law right now is a failure the way it is working. The fact is you have 76,000-some people that have been denied under the present law. Only 44 were prosecuted. You are letting them go. They are walking the streets.

Chairman LEAHY. Then do I understand back in 1999 you said no loopholes anywhere for anyone, but now you do not support background checks for all buyers of firearms?

Mr. LAPIERRE. I think the National Instant Check System, the way it is working now, is a failure because this administration is not prosecuting the people that they catch. They are not—23 States are not even putting the mental records of those adjudicated mentally incompetent into the system.

Now, assume that if you do not prosecute and they try to buy a gun, even if you catch them, and you let them walk away, to assume they are not going to get a gun, they are criminals, they are homicidal maniacs, and they are mentally ill, I mean, we all know that homicidal maniacs, criminals, and the insane do not—do not—

Chairman LEAHY. Mr. LaPierre—

Mr. LAPIERRE [continuing]. Abide by the law.

Chairman LEAHY. My time is up. With all due respect, that was not the question I asked, nor did you answer it.

Mr. LAPIERRE. But I think it is the answer. I honestly do. The fact—

Chairman LEAHY. It is your testimony.

Senator GRASSLEY.

Senator GRASSLEY. Before I ask questions, Senator Hatch asked if I would explain to everybody here why he left. He is Ranking Member of the Finance Committee, and Senator Baucus has scheduled a hearing for 10:45, and he has to be there for that.

Professor KOPEL, was the 1994 assault weapons ban a sensible and effective means of reducing gun violence? And, second, is there any reason to re-enact a more extensive assault weapons ban?

Professor KOPEL. Based on the Department of Justice study, the answer was no, that it was something that was tried with great sincerity, a lot of people thought it would be a good idea, but it did not seem to save any lives that the researchers could find.

The revised law is just more of the same, but it suffers from the same fundamental problem. You can have a 1994 law that lists some guns by name and a 2013 law that lists more guns by name. But the very fact that you are banning guns by name, that is just an example of how the law does not address the guns' firepower or their rate of fire. It simply—if there is something that makes these guns more dangerous, then legislation ought to be able to describe it in neutral terms. So all these names I think are a sign of exactly what is wrong with the bill.

Now, the present bill, like its 1994 predecessor, also outlaws things based on various features. But, again, these are not things that have to do with the internal mechanics of the gun, how fast it fires, or how powerful the bullets are. They are things like whether a rifle has a forward grip. Well, a forward grip on a rifle helps the user stabilize it and make the gun more accurate so that, if you are deer hunting, the second shot is almost as accurate as the first, or if you are target shooting or, more importantly, most importantly, if you are engaged in lawful self-defense. And that is why you see guns like the AR-15 with their standard factory-issued 30-round magazines in police cars all over the country, because they make the gun more accurate for the core purpose of the Second Amendment, which is lawful self-defense.

Senator GRASSLEY. Okay. Chief Johnson and Professor Kopel, listen while I read, and I will ask each of you a question. Recently,

Iowa law enforcement officials were quoted in an article that I ask consent to include in the record entitled “Law officers tell Congressman mental health issues more important than gun ban.” In it, a bipartisan group of elected sheriffs and police chiefs offered candid assessments of current legislative proposals. One chief of police stated, “I think banning assault weapons and high-capacity magazines is strictly a feel-good measure. It is not going to accomplish anything.”

Instead, they asked for options for getting mentally ill individuals treatment. Chief Jim Clark, Ottumwa, Iowa, added, “We identify some that are mentally ill, they need treatment, but we cannot access the system.”

So, Chief Johnson, what options do your officers have from your experience—because I quoted Iowa—currently have in dealing with individuals they believe to have untreated mental illness?

Chief JOHNSON. It is a major problem in America today and in my jurisdiction. I am here today to talk about guns and ways to stop gun violence, and we know a comprehensive background check that picks up these mental health issue disqualifiers will make our Nation a safer place. We know that banning high-capacity magazines will make our police officers safer. We have lost dozens of police officers in America due to assault weapons, and we have seen tragedies all across this great Nation—Aurora, Newtown, and Webster, New York. An off-duty police officer—you are never off duty. He was a police officer shot down by an assault weapon. It is a serious problem, and it must be addressed.

Senator GRASSLEY. Professor Kopel, you authored an article in the Wall Street Journal last month entitled “Guns, Mental Illness, Newtown.” And I would also like to have that included in the record.

Is there evidence that mental illness and changes to civil commitment laws play a part in mass shootings? And what can we do to keep guns away from the mentally ill consistent with our Second Amendment?

Professor KOPEL. Well, certainly they play quite a major role in homicides in general. According to the Department of Justice research, about one-sixth of the people in State prisons for homicide are mentally ill. If you look at these mass murders where suicidal people try to end their lives in the most infamous way possible, in Tucson, Virginia Tech, Newtown, Aurora, you have a very strong thread of mental illness running through that. And certainly improving the background—the data about mental health adjudications, not just a psychiatrist’s recommendation or something like that, but what due process and the Constitution require, which is an adjudication, a fair decision by a neutral decisionmaker, getting those into the background check system is something that Congress started working on after Virginia Tech, and there is more progress to be made.

But it is not just a matter of checks. Even if you have the most ideal check system in the world, at the least—and imagine these criminals, violent, insane criminals, could never get a gun anywhere else—you know, Adam Lanza at Newtown did not have background checks. He stole the guns after murdering his mother.

So the long-term solution is not just about background checks. It is about why are these people on the streets in the first place.

All of these killers I have just mentioned could have been civilly committed under the civil commitment laws we had several decades ago. Those laws were changed because they were sometimes abused. But I think we can move back to a more sensible position that strongly protects the due process rights of people against involuntary commitment, but also gets dangerous people off the streets. And that will cost money at the State level, but it is money that will be greatly saved in the long term through reduced incarceration costs for crimes.

Senator GRASSLEY. Okay. Ms. Trotter, your testimony discussed the need for women to be able to use firearms to defend themselves and their families. The law currently permits the lawful possession of semiautomatic rifles such as AR-15s. Can you tell us why you believe a semiautomatic rifle such as an AR-15 has value as a weapon of self-defense? And does banning guns which feature designed to improve accuracy disproportionately burden women?

Ms. TROTTER. I believe it does. Young women are speaking out as to why AR-15 weapons are their weapon of choice. The guns are accurate. They have good handling. They are light. They are easy for women to hold. And most importantly, their appearance. An assault weapon in the hands of a young woman defending her babies in her home becomes a defense weapon, and the peace of mind that a woman has as she is facing three, four, five violent attackers, intruders in her home, with her children screaming in the background, the peace of mind that she has knowing that she has a scary-looking gun gives her more courage when she is fighting hardened, violent criminals. And if we ban these types of assault weapons, you are putting women at a great disadvantage, more so than men, because they do not have the same type of physical strength and opportunity to defend themselves in a hand-to-hand struggle. And they are not criminals. They are moms. They are young women. And they are not used to violent confrontations.

So I absolutely urge—I speak on behalf of millions of American women across the country who urge you to defend our Second Amendment right to choose to defend ourselves.

Senator GRASSLEY. Thank you.

Chairman LEAHY. Thank you.

Senator FEINSTEIN.

Senator FEINSTEIN. Thank you very much, Mr. Chairman, for holding this hearing, and I want to thank everybody for being here, particularly our witnesses, even you, Mr. LaPierre. It is good to see you again.

[Laughter.]

Senator FEINSTEIN. I guess we tangled——

Mr. LAPIERRE. We have.

Senator FEINSTEIN. We tangled, what was it, 18 years ago? You look pretty good, actually.

Chairman LEAHY. I will give a little prerogative to the laughter, but please go ahead.

Senator FEINSTEIN. I would like to add something to the record, Mr. Chairman, page 44 of the Department of Justice report, As-

sault Weapons as a Percentage of Gun Traces, which shows a 70-percent decline from 1992–93 to 2001–02.

Chairman LEAHY. Without objection, so ordered.

Senator FEINSTEIN. Thank you. Thank you very much.

[The information referred to appears as a submission for the record.]

Senator FEINSTEIN. Chief Johnson, I would like to talk with you. First of all, I am very grateful for the support of your organization, of the Major Chiefs, and the International Association of Chiefs of Police, as well as trauma surgeons who see what these guns do in tearing apart bodies.

I have become very concerned, as I looked at the bill before in 1993, at the technological improvement in these weapons over these years. And one of the things that we have tried to do in this new bill is prevent that from happening in the future.

In looking at the AR–15 magazine on a device which is legal called a “slide fire,” I note that, with practice, a shooter may control his rate of fire from 400 to 800 rounds per minute or shoot 2, 3, or 4 rounds at a time and just as easily fire single shots.

So this is a weapon—and I think Ms. Trotter is right. It apparently is versatile. It apparently is rather easy to use. But it has tremendous velocity and tremendous killing power and I suspect tears young bodies apart.

Additionally, it is my understanding that Mrs. Lanza actually gave this gun to her son. Is that correct?

Chief JOHNSON. These guns used in Newtown were not stolen, Professor. They were in the home, accessible to the shooter.

Senator FEINSTEIN. Thank you.

Chief JOHNSON. It is a major problem, safety and security of weapons. In my jurisdiction, two school shootings, safety and security of the weapons would have made a difference in that case. And, Senator, your bill, I salute and applaud you for including a safety and security measure.

Senator FEINSTEIN. Well, thank you very much, Chief. This is such a hard debate because people have such fixed positions. Police, I think, see killings as they are. Many people do not. So in a sense, the straight speak about this issue, the more you add highly technologically efficient weapons which are originally designed to kill people in close combat, and they fall in the hands of the wrong people.

It is my understanding that Mrs. Lanza’s son, the shooter in this case, had no mental health record. Is that correct?

Chief JOHNSON. It is my understanding that no record exists. It is my understanding that there was ample evidence, though, amongst those close to him that there was a serious problem.

Senator FEINSTEIN. Which is really something that I think we need to tackle today. Mental health laws are usually the preserve of the State and the local governments. They provide the facilities. Do you have any suggestions there with respect to anything that we might be able to do to improve mental health laws nationally which might catch people who are a danger to themselves or others in this area?

Chief JOHNSON. This is a major problem for law enforcement. Citizens, police officers, doctors, parents can petition for an emer-

agency evaluation when they see behavior that presents an individual as being a danger to themselves or others, and it is really important that we all do this. And it is a tough decision, but sometimes you have to make it against your own son. Very, very hard. It could affect their entire life. But it has to be done.

The improvement that needs to be made is we have to have this information entered instantly into a data system in the event that the individual tries to go out within 24 hours to get a gun.

The fellow in Wisconsin that went into the salon to shoot his wife, he wanted a gun fast. He wanted it fast. He was hot. He was emotional. He was out of control. And he wanted to get a gun fast, and the way you do that is you reach out outside the established background check system and acquire it. If that record would have been entered into the system, the domestic violence order, it would have been entered instantly, like we can do today in many areas, that gun could have—a gun could have been prevented from getting in the hands of a person who is going to carry it out when they are at a high emotional stage. This is really, really important.

Senator FEINSTEIN. We have millions and millions of big clips. The Aurora shooter used a 100-round drum. Fortunately, it jammed; otherwise, he would have killed more people. I think most people believe that, sure, we could have guards at schools. I am well aware that at Columbine there was a deputy sheriff who was armed who actually took a shot but could not hit the shooter there. The question comes: What do you do about the malls then? What do you do about our movie theaters? What do you do about businesses? We cannot have a totally armed society. And that is my feeling in terms of the need to say that there are certain categories of guns.

We actually exempt over 2,000 specific weapons by make and model name to create and then ban about 158 assault weapons and go to a one-characteristic test.

You have looked at this bill. Do you believe it will be effective?

Chief JOHNSON. Yes, ma'am, I do. I believe that holistically addressing all the issues in the President's plan as well as a comprehensive universal background check procedure, banning high-capacity magazines, and banning the sale of assault weapons, frankly, collectively, all these together will create a system. The best way to stop a bad guy from getting a gun in the first place is a good background check.

Senator FEINSTEIN. Thank you very much.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

As Senator Grassley noted, Senator Hatch has to be at another thing. I will recognize him when he comes back. I am going to go back and forth going by seniority, and we will go to Senator Sessions. But I will also announce that all Members can put statements in the record by the close of business today as though read.

Senator Sessions.

Senator SESSIONS. Thank you, Mr. Chairman.

I have spent the better part of my career, I guess, prosecuting cases, 12 years as a United States Attorney, and during that time I gave a high emphasis to prosecutions of gun violations. We were one of the top prosecuting districts in the country.

I note in the latest University of Syracuse report, they list my district, the Southern District of Alabama, as number one in the Nation still today in prosecution of gun violations.

This is what the University of Syracuse study said, however, in its lead comment: "Weapons prosecutions declined to the lowest level in a decade."

"The latest available data from the Justice Department show that during January 2011 the government reported 484 new weapons prosecutions. This is the lowest level to which Federal weapons prosecutions have fallen since January 2001, when they were 445 at the time President Bush assumed office."

They go on to note some of the declines in various categories, and so, first and foremost, I would say to you as someone who has personally tried a lot of these cases before a jury, written appellate briefs on these cases, that the bread-and-butter criminal cases are felons in possession of a firearm and carrying a firearm during a crime, both of which are serious offenses. Carrying a firearm during a crime, drug crime or crime of violence or other serious crimes, is a mandatory 5-year sentence without parole. Those prosecutions have declined, unfortunately, substantially under President Obama's Presidency.

Chief, does it concern you that comparing total prosecutions per month for guns in Federal court with those per month in 2011 with those for the same period in 2010, the number of filings went down 7.9 percent and were down 28.8 percent from 2006 in Federal court? Does that concern you?

Chief JOHNSON. Senator, I can tell you that in the Baltimore County Police Department—

Senator SESSIONS. I just asked you if those are the numbers, does that concern you?

Chief JOHNSON. No, because you do not—

Senator SESSIONS. It does not concern you?

Chief JOHNSON. Sir, you are not including local prosecutions. I cannot stand before you today and tell you of a single case in Baltimore County of an illegally possessed gun that was not prosecuted at the State level—

Senator SESSIONS. Well, are we trying to pass a Federal law today or a State law?

Chief JOHNSON. Certainly background checks—

Senator SESSIONS. That is what you are calling for, is a Federal law. We would like to see the Federal laws on the books enforced, I suggest.

And with regard to the crimes of carrying a firearm during the furtherance of a violent or drug-trafficking offense, those prosecutions declined 27.5 percent between 2007 and 2011. So I would just say, first of all, we need to make sure we are doing our job there.

I would also note that although crime is a very, very important matter, we should never lose our emphasis on bringing down crime. The murder rate in America today is half what it was in 1993. We have made progress on that, and we can continue to drive those numbers down. It is not as if we have an unusual surge in violent crime in America.

Now, with regard to the background checks and straw purchases, let us be frank. Straw purchases are a problem and should be pros-

ecuted. I have prosecuted those cases before on a number of occasions. I prosecuted gun dealers who failed to keep records as required by the law. But the number of defendants charged under 18 U.S.C. 922(a)(6), making material misrepresentations under the Federal firearms law regarding the lawfulness of a transfer, has declined from 459 in 2004 to 218 in 2010. That is about half, a 52-percent decline under this administration's leadership.

I would just say to you, mathematically speaking, violence in America is impacted mostly when you are enforcing these bread-and-butter violations that are effective, they are proven, and they work. They have the support of Mr. LaPierre, I think. I know that group supports them. I think everybody supports these strong laws, and that is where the rubber meets the road. That is where you really begin to impact crime. If you can intimidate—and I believe the word is getting out. It did in our district, that if you carry a gun in a crime, a drug-dealing offense, you could be prosecuted in Federal court, given 5 years in jail without parole. And I believe we saw a decline in the violence rate and the number of drug dealers and criminals carrying guns. But you have to prosecute those cases.

Mr. LaPierre, it does appear that the straw purchase prohibition that is out there, that prohibition seems to me to be legitimate, and I support and you said you support the prosecutions of it. If we expand the number of people covered, but we do not have any prosecutions—I believe you used the number 44 was all—there are 90 United States Attorneys in America, only 44, only one out of every two apparently is prosecuting a single case in a single year. That is the weakness in the system.

Mr. LAPIERRE. Senator, there needs to be a change in the culture of prosecution at the entire Federal level. It is a national disgrace. The fact is we could dramatically cut crime in this country with guns and save lives all over this country if we would start enforcing the thousands of Federal laws we have on the books. I am talking about drug dealers with guns, gangs with guns, and felons with guns. They are simply not being enforced. The numbers are shocking.

In Chicago, one of the worst areas in the country in gun violence by criminals, it is 89 of 90 in terms of Federal prosecutions.

In the entire United States, 62 people prosecuted for lying on the Federal background check. I mean, when Dave Schiller and Project Exile cleaned up Richmond years ago, they did 350 cases in Richmond. I mean, if you want to stop crime, interdict violent criminals, incarcerate them, get them off the street before they get to the next crime scene.

Senator SESSIONS. Well, I agree.

Mr. LAPIERRE. Or worse.

Senator SESSIONS. My time is up. Richmond was a great model, and I would just say I would call on President Obama to call in Attorney General Eric Holder and ask him why the prosecutions have dropped dramatically across all categories of Federal gun laws. And he should call in his United States Attorneys and tell them, "You need to look at your numbers and get them up and emphasize these prosecutions."

Thank you, Mr. Chairman.

Chairman LEAHY. Senator Schumer.

Senator SCHUMER. Well, thank you.

First, let me apologize to the witnesses. We have a Finance Committee meeting on reconciliation, which probably affects our police chief anyway, and so I had to be there.

And I want to thank you, Chairman Leahy, for organizing this important hearing.

I thank all the witnesses for being here, particularly Congresswoman Giffords and Captain Kelly for your testimony. We have been moved by your strength, your courage that your family has demonstrated in the face of unspeakable tragedy. By being here instead of cursing the darkness, you are lighting a candle. Thank you.

Now, I do believe today we have a chance to do something reasonable in the aftermath of the Sandy Hook tragedy. But when we discuss ways to stop violence, guns must be included in that discussion.

I heard Ranking Member Grassley say that we must go beyond guns. That is true. But we must include guns as well. Not including guns when discussing mass killings is like not including cigarettes when discussing lung cancer.

But at the same time, I agree. We cannot simply replay the usual zero sum political game on guns, or the moment will pass us by.

The Supreme Court ruling in *Heller*, which struck down the District of Columbia's ban on handguns, laid out a good framework. It said an individual right to bear arms does exist, but it comes with limitations, like every amendment. In other words, it is now settled law that the Government is never going to take away Americans' guns.

Progressives need not to accept this decision, but to endorse it. We have got to follow it, not just de jure but de facto. And it makes sense. You cannot argue for an expansive reading of amendments like the First, Fourth, and Fifth, but see the Second Amendment through the pinhole of saying it only affects militias.

At the same time, those on the pro-gun side must recognize no amendment is absolute. The First Amendment protects freedom of speech. It is hallowed. But you still cannot falsely shout "Fire" in a crowded theater or traffic in child pornography. Those are reasonable limits on the First Amendment.

The Second Amendment has sensible limits, too. My colleagues have offered a range of impressive and thoughtful proposals on the topic of gun violence.

For example, Chairman Leahy has introduced a bill on trafficking. Senator Feinstein has introduced one on assault weapons, Senator Blumenthal on ammunition.

But for the last several years, my particular focus in the area of gun safety has been on responsible gun ownership and background checks. Universal background checks is a proven, effective step we can take to reduce gun violence. And I believe it has a good chance of passing. Federally licensed firearm dealers have been required to conduct background checks on prospective gun purchasers since we passed the Brady bill. And we have seen that they work. Since 1999, the Federal background check system has blocked 1.7 million

prohibited purchasers from buying firearms at federally licensed dealers.

Yes, we should prosecute them. But the number one goal is to prevent a felon from getting a gun in the first place. That is what this did 1.7 million times. The current system works well. But there are some glaring holes.

First of all, not all gun sales are covered by a background check. The problem, sometimes referred to as "the gun show loophole," means that a private seller could set up a tent at a gun show or somewhere else and not have to conduct background checks on his purchasers.

Current estimates show that because of these loopholes 48 percent of gun sales are made without a background check. If you are a felon, if you are a gun trafficker, if you are a mentally ill person, you know that you can go to a gun show and not have any check. So, of course, that is what they do.

This is not fair, also, to dealers who follow the rules and conduct checks. The registered dealers at their gun stores have to obey the rules. Why should someone going to a gun show have a different rule? There is no logic to it. None. I was there. I was the author of the Brady bill, and that was something that we were forced to put in the bill, those of us who were not for it, as a way to get the bill passed. But the last 15 years has proven it does not make sense.

The second problem with the current system is that not all records are fed into the system. This is especially true with mental health records. Nineteen States have submitted fewer than 100 mental health records to NICS.

I think we can get bipartisan agreement on a bill that solves these problems by doing two things. One, it will prevent felons and the mentally ill from getting guns by requiring a background check before all purchases. And, two, it will get relevant records into the system.

Now, at the moment, right now, as we meet here today, I am having productive conversations with colleagues on both sides of the aisle, including a good number with high NRA ratings. And I am hopeful that we are close to having legislation we can introduce.

And I would urge the NRA, Mr. LaPierre, and other gun advocacy groups to work with us on this proposal. The NRA supported our 2007 legislation that improved the NICS background check system. And I hope they will reconsider and try to do that again.

It is a simple, straightforward solution. It is one the American people support. A recent survey by the New England Journal of Medicine found 90 percent of the public and 74 percent of NRA members support requiring background checks for all gun sales.

I understand, because we have not introduced it, I cannot ask the witnesses about it, but I want to tell you what it will not do.

It will not create any gun registry. That is already illegal, and it will be repeated as illegal in our law. That is particularly for Mr. Kopel. And it will not limit your ability to borrow your Uncle Willy's hunting rifle or share a gun with your friend at a shooting range.

It will include reasonable exceptions to make sure we are only requiring background checks for bona fide sales and transfers. So specious claims about background checks are a tactic made by those who cannot argue with the facts.

Now, I would like to ask Chief Johnson a question or two about those checks. Do you agree with the logic that even—you know, that we should prosecute people who illegally try to buy guns, but even without that, the law has done a whole lot of good because people who are felons or adjudicated mentally ill, millions have been stopped from buying guns and getting guns?

Chief JOHNSON. Since 1994 to 2009, the record is very clear. It is a fact that nearly 2 million prohibited purchases were stopped. God only knows what they would have done with those weapons had it not been for that particular law.

Senator SCHUMER. And from a law enforcement point of view, would not we rather—we want to do both, but would not we rather stop them from having a gun than after they shoot somebody or buy a gun illegally, then arrest them and put them in jail for that crime?

Chief JOHNSON. Yes, sir. You have to address the pathology, how you get the gun in the first place. And that is what we are trying to achieve here by a universal background check. And I am very proud to stand before you this morning to let you know that the entire National Law Enforcement Partnership to Prevent Gun Violence, every member of our organization supports background checks.

Senator SCHUMER. Right. And does it make any sense to exclude the same people who sell them in a gun shop or others to go to a gun show and not have any background check at all?

Chief JOHNSON. It is absolutely insane. Again, it is like letting 40 percent of people just pass a TSA checkpoint at an airport. It is not an inconvenience. The record shows that nearly 92 percent of the individuals that go in to try to do a background check at a gun shop, in a minute and a half they are done. I cannot write a ticket, a citation in a minute and a half. Even with e-ticket technology, I cannot do it that fast.

It is not inconvenient. And it is fair to the gun owner and the shop owner, too. Why impose on a shop owner, a gun dealer, a federally licensed dealer, more restrictions than you do on anyone else? And if you think for a minute you can sell your gun to your neighbor that you have known for 10 years, you do not know your neighbor. You do not know your neighbor. And the only way to make sure that you are safe in what you are doing is a comprehensive background check.

Senator SCHUMER. One final quick question. Many police officers are avid sportsmen. They enjoy shooting, not in their official professional duties. The surveys show the overwhelming majority of gun owners are for background checks. Does your personal experience corroborate that?

Chief JOHNSON. It is my understanding that 74 percent of NRA members support a background check. I am a hunter. I love to hunt. I own several guns. I love going to the range with my son who is a police officer today. It is enjoyable. I have met many great people.

Senator SCHUMER. Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

I understand we are not going to go in quite the order we said before, but Senator Graham has graciously said Senator Cornyn could go. So please, Senator Cornyn.

Senator CORNYN. Well, thank you, Mr. Chairman, and thanks to all of the witnesses for being here today and sharing your observations and testimony. I am particularly gratified to see Congresswoman Giffords here doing so well and speaking so forcefully.

I hope this hearing serves as a starting point for us to consider a range of ideas on this topic. Anything that falls short of serious examination and discussion is just window dressing, just symbolism over substance. I have a hard time telling my constituents in Texas that Congress is looking at passing a whole raft of new laws when the laws that we currently have on the books are so woefully unenforced.

I think we can and we should come together to address the shortcomings in mental health care, both in the general response to mental illness and also in the background checks mechanisms we use to screen out prohibited gun buyers.

We need to ask whether years of deinstitutionalization of the mental health population have left America more vulnerable. Perhaps it is time to consider our background check laws to see if they need to be updated to screen out the growing number of people who are subjected to court-ordered outpatient mental health treatment.

It is unclear whether the tens of thousands of committed outpatients in this country are falling through the cracks, and surely, we can agree that more needs to be done to enforce existing gun laws, as I said a moment ago.

Gun crime prosecutions are down across the board, including enforcement of laws against lying on background checks. And, Mr. Chairman, I hope we will have a follow-on hearing where we will ask administration witnesses to come before the panel and to testify why the Department of Justice and other law enforcement agencies of the Federal Government are not enforcing laws that Congress has already passed.

It is worth noting that 5 years ago, Congress was asking the same questions we are asking right now. In 2008, there was an attempt made to strengthen the background check laws following the murders at Virginia Tech. Looking back, we have to ask ourselves: Did those laws work? Well, the Government Accountability Office just last July gave it mixed reviews.

The GAO reports that only a handful of States have taken seriously the responsibility to share mental health records. And I am pleased that Texas is highlighted by the GAO as outperforming other States in this area. But we have a long way to go.

So I think there are areas where Congress can come together right now to examine the nexus between gun crime, violence, and mental health care. And I am willing to listen to serious ideas, not just window dressing, to try to come up with solutions.

Captain Kelly, I noticed in your testimony you alluded to part of what I talked about, which is the fact that at the time in Arizona there were 121,000 records of disqualifying mental illness for people in Arizona that had not been subjected to background checks

because the State had not sent that information to the Federal Government.

Could you expand on the significance of that?

Captain KELLY. Yes, sir. So in the case of Jared Loughner, the person who shot my wife and murdered six of her constituents, he was clearly mentally ill. He was expelled from Pima Community College because of that. There was nowhere for—or his parents and the school did not send him anywhere to be adjudicated or evaluated with regards to his mental illness.

Now, Mr. LaPierre earlier tried to make the point that criminals do not submit to the background checks. Well, Jared Loughner, the guy, the Tucson shooter, was an admitted drug user. He was rejected from the U.S. Army because of his drug use. He was clearly mentally ill. And when he purchased that gun in November, his plan was to assassinate my wife and commit mass murder at that Safeway in Tucson. He was a criminal—because of his drug use and because of what he was planning on doing.

But because of these gaps in the mental health system—now, in this case, those 121,000 records, I admit, did not include a record on him. But it could have. And if it did, he would have failed that background check.

Now, obviously, in this case, he would have likely gone to a gun show or a private seller and avoided a background check. But if we close the gun show loophole, if we require private sellers to complete a background check, and we get those 121,000 records and others into the systems, we will prevent gun crimes. That is an absolute truth. It would have happened in Tucson. My wife would not be sitting in this seat, she would not have been sitting here today, if we had stronger background checks.

Senator CORNYN. Mr. LaPierre, you talked about the laws that are already on the books and the fact that the Federal Government has a poor record of enforcing current laws. And I fail to see how passing additional laws that the Department of Justice will not enforce is going to make America any safer.

But let me just ask you to react briefly to these statistics. From 2007 to 2011, the Department of Justice has charged 13 percent fewer total firearms cases. In each of the years during that span, the current administration has brought fewer firearms prosecutions than the year before.

In January 2011, only 484 new firearm prosecutions were initiated by the Department of Justice, the fewest number of prosecutions in 10 years. As far as background check prosecutions from 2006 to 2010, the number of investigations for unlawful possession decreased 26 percent. During the same period, 77 percent fewer NICS denials were referred by the Bureau of Alcohol, Tobacco, and Firearms for prosecution. Federal prosecutors declined 82 percent more cases over the same period. In 2010, out of the 76,125 denied background checks the FBI referred to the ATF, a verdict or plea was reached in just 13 cases.

Would you give us your reaction to that record?

Mr. LAPIERRE. I think it is tragic, Senator. I mean, the fact is, in the shadow of this Capitol, right under everyone's noses, in this building, right now there are drug dealers out in the street with guns violating Federal law, illegal. There is all kinds of drugs and

cocaine being sold. By God, gangs are trafficking 13-year-old girls. And it goes on day after day after day.

What we have got to do is interdict these people, get them off the street before they get to the next crime scene. I mean—and get in the real world in terms of checks. I mean, the fact is the NRA has been trying for 20-some years—Senator Schumer and I went back and forth on “Face the Nation” where I asked him if he would help get those adjudicated mentally incompetent into the system 20 years ago. He said yes, and they are still not in the system. And my point is, even if you turn up someone on an instant check that is a mentally ill person or a felon, as long as you let them go, you are not keeping them from getting a gun, and you are not preventing them from getting to the next crime scene.

I mean, we have got to get in the real world of this discussion. The problem with gun laws is criminals do not cooperate with them. The mentally ill do not cooperate with them. So you have got to interdict, incarcerate, interdict, get in treatment, and do things that matter. And then you have got to put police officers in schools, armed security in schools. But let us do the things that work. Let us get serious about this.

I mean, this discussion, I mean, I sit here and listen to it, and my reaction is how little it has to do with making the country and our kids safe and how much it has to do with this decade-long or two-decade-long gun ban agenda that we do not enforce the laws even when they are on the books. The Attorney General of the United States, Attorney General Eric Holder, during the Richmond program called it a “cookie-cutter approach” to solving crime that, you know, he really did not have a lot of enthusiasm about.

I remember Senator Sessions held a hearing, and the Department of Justice testified, well, a drug dealer with a gun is a guppy, and we cannot really concentrate on guppies. Those guppies are what are ruining neighborhoods, destroying lives, and killing people. And we have got to confront their behavior, take them off the street because they do not obey all the laws that we have right now. We have got to get in the real world on what works and what does not work.

My problem with universal background checks is you are never going to get criminals to go through universal background checks. For all the law-abiding people, you will create an enormous Federal bureaucracy, unfunded, all the law-abiding people in the country will have to go through it, pay the fees, pay the taxes. We do not even prosecute anybody right now who goes through the system we have. So we are going to make all those law-abiding people go through the system, and then we are not going to prosecute any of the bad guys when we catch one. And none of it makes any sense in the real world. We have 80,000 police families in the NRA. We care about safety. We will support what works.

Chairman LEAHY. I am trying to be fair to everybody here, and certainly you are going to have a lot more chances to speak.

Senator DURBIN.

Mr. LaPierre, that is the point. The criminals will not go to purchase the guns because there will be a background check. We will stop them from the original purchase. You miss that point completely.

Mr. LAPIERRE. Senator——

Senator DURBIN. I think it is—it is basic.

[Laughter.]

Mr. LAPIERRE. Senator, I think you miss——

Chairman LEAHY. Let there be order.

[Applause.]

Mr. LAPIERRE. I think you are missing——

Chairman LEAHY. There will be order.

Mr. LAPIERRE. If you do not prosecute them, you are not stopping them.

Chairman LEAHY. Please wait, everybody, for a moment. As I said earlier, there will be order in the Committee room.

Senator Durbin, and then——

Senator DURBIN. I am going to give you a chance, but let me just say at the outset, Captain Kelly, thank you. Thank you for bringing that wonderful, brave wife of yours today to remind us what victims suffer from gun violence. What a heroic figure she is, and what a great pillar of strength you are to stand by her during this entire ordeal and her rehabilitation. We are so proud of her and of you.

Captain KELLY. Thank you.

Senator DURBIN. And I say with some regret, there should have been a hearing just like this right after your wife, one of our own, a Member of Congress, was shot point-blank in the face at a town meeting in Tucson, Arizona.

I am sorry it has taken 2 years for us to convene this hearing, but it took Newtown, Connecticut, to finally bring us to our senses and to open this national conversation. But I hope that you will extend to her our best wishes, our love, and our support for what she is doing today and what she has meant to all of us for this long period of time.

I also want to say a word about an incident. There was a young lady from Chicago, Illinois, 15 years old. She attended King College Prep School in Chicago. She was an honor student and a majorette, and she marched in the inauguration last week here. It was the highlight of her young 15-year-old life.

Yesterday, in a rainstorm after school she raced to a shelter. A gunman came in and shot her dead. Just a matter of days after the happiest day of her life, she is gone.

A lot has been said about the city of Chicago, and I want to say a few words, too. Our biggest problem in Chicago, according to Superintendent McCarthy, who came to Chicago from New York, is that we are awash in guns.

The confiscation of guns per capita in Chicago is six times the number of New York City. We have guns everywhere. And some believe the solution to this is more guns. I disagree.

When you take a look at where these guns come from, 25 percent plus are sold in the surrounding towns around the city of Chicago, not in the city.

And you look over the last 10 or 12 years, of the 50,000 guns confiscated in crimes, almost one out of ten crime guns in Chicago came to that city from Mississippi. Mississippi. Why? Because the background checks there, the gun dealers there are a lot easier than they are in other places. And they end up selling these guns

in volume, and they come up the interstate and kill wantonly on the way.

Here are the basics. I think we all agree—I hope we all agree—that the Supreme Court decision in *Heller* said we can have reasonable limitations on a Second Amendment right in terms of the type of weapon and the people who own them and the background checks on those people. It is something we desperately need to do.

But we know now that 40 percent of the sales are not going through the background checks. That is a huge problem. It has created this abundance of weapons that are available.

And the straw purchasers, I salute the chairman for addressing this issue on straw purchasers. It is one of the worst situations in our State and in the city of Chicago.

I can point to one gun store—one gun store—in Riverdale, Illinois, that accounts for more than 20 percent of the crime guns in Chicago. Straw purchasers buy the guns there, and they end up in the hands of criminals in the city of Chicago. We got to put an end to this. Mr. Chairman, thank you for your bill.

And let me ask—I am going to ask a question here of some of the panelists.

Mr. LaPierre, I run into some of your members in Illinois, and here is what they tell me: “Senator, you do not get the Second Amendment.” Your NRA members say, “You just do not get it. It is not just about hunting. It is not just about sports. It is not just about shooting targets. It is not just about defending ourselves from criminals,” as Ms. Trotter testified. “We need the firepower and the ability to protect ourselves from our Government”—“from our government, from the police if they knock on our doors, and we need to fight back.”

Do you agree with that point of view?

Mr. LAPIERRE. Senator, I think without any doubt, if you look at why our Founding Fathers put it there, they had lived under the tyranny of King George, and they wanted to make sure that these free people in this new country would never be subjugated again and have to live under tyranny.

I also think, though, that what people all over the country fear today is being abandoned by their Government, if a tornado hits, if a hurricane hits, if a riot occurs that they are going to be out there alone. And the only way they are going to protect themselves in the cold and the dark, when they are vulnerable, is with a firearm. And I think that indicates how relevant and essential the Second Amendment is in today’s society to fundamental human survival.

Senator DURBIN. Well, Chief Johnson, you have heard it. The belief of NRA is the Second Amendment has to give American citizens the firepower to fight back against you, against our Government.

Mr. LAPIERRE. That is not—

Senator DURBIN. So how do you conduct your business in enforcing the law and not knowing what is behind that door?

Chief JOHNSON. I find it to be scary, creepy, and it is simply just not based on logic. Certainly, law enforcement across this Nation is well prepared to deal with any natural or man-made disaster

that will occur. And, frankly, I just—I cannot relate to that kind of thinking.

Senator DURBIN. I cannot either. And I cannot relate to the need of that man in Aurora, Colorado, to have a 100-round drum, 100 cartridges.

Professor KOPEL, do you think that is necessary for hunting, sports, target practice, even self-defense?

Professor KOPEL. It would be not legal for hunting in most States where there are limits on how many rounds you can have in a magazine. But as I think you have recognized, the Second Amendment is not primarily about hunting.

What I have been talking about is what the Supreme Court said in *District of Columbia v. Heller*, which is what is the core of the Second Amendment, which is the firearms and their accessories which are commonly owned by law-abiding people for legitimate purposes.

Senator DURBIN. But let me tell—

Professor KOPEL. And those are not—and I am not talking about 100-round magazines. I am talking about what police officers carry, what citizens carry, semiautomatic handguns, typically with magazines of 11 to 19 rounds—

Senator DURBIN. But those are police officers.

Professor KOPEL [continuing]. And rifles.

Senator DURBIN. Those are members of our military.

Professor KOPEL. No, they are not military men. They are not coming to attack people. They are coming to protect people, and they want to protect—and citizens protect themselves the same way that police officers do.

Senator DURBIN. What I am trying to get to is this: If you can rationalize a 100-round drum that someone can strap onto a semi-automatic weapon, as it did in Aurora, Colorado, and turn it loose, killing dozens of people there, and saving lives only because it jammed, then you certainly ought to object to the laws that have been on the books for 80 years about machine guns. Why are they not allowed under the Second Amendment?

Professor KOPEL. According to *Heller*, because they are not commonly used by law-abiding citizens for legitimate purposes.

Senator DURBIN. And 100-round magazines are?

Professor KOPEL. You are the one who wants to talk about 100-round magazines, and thank goodness—

Senator DURBIN. I sure do.

Professor KOPEL. Thank goodness he had a piece of junk like that that jammed, instead of something better made where he could have killed more people with it.

Senator DURBIN. Well, that is what it is all about, then?

Professor KOPEL. It is about saving—

Senator DURBIN. We are playing God here?

Professor KOPEL. It is about saving lives. It is about saving lives with ordinary magazines. Hundred-round magazines are novelties that are not used by police officers or hunters or most other people.

Senator DURBIN. Well, Captain Kelly—

Professor KOPEL. But what you are talking about banning, Senator, is normal magazines.

Senator DURBIN. Tell us about the lives that were saved in Tucson and what it had to do with magazines.

Captain KELLY. The shooter in Tucson showed up with two 33-round magazines, one of which was in his 9-millimeter. He unloaded the contents of that magazine in 15 seconds. Very quickly. It all happened very, very fast. The first bullet went into Gabby's head. Bullet number 13 went into a 9-year-old girl named Christina-Taylor Green, who was very interested in democracy and our Government and really deserved a full life committed to advancing those ideas.

If he had a 10-round magazine—well, let me back up. When he tried to reload one 33-round magazine with another 33-round magazine, he dropped it. And a woman named Patricia Maisch grabbed it, and it gave bystanders time to tackle him. I contend if that same thing happened when he was trying to reload one 10-round magazine with another 10-round magazine, meaning he did not have access to a high-capacity magazine, and the same thing happened, Christina-Taylor Green would be alive today.

I certainly am willing to give up my right to own a high-capacity magazine to bring that young woman back, that young girl.

Now, let me continue with what happened that day. In that 15 seconds—or, actually, with the first shot, a man ran out of Walgreen's, a good guy with a gun, with the intent to do the right thing, an armed citizen. He came within—he admits that he came within about a half a second of shooting the man who tackled Jared Loughner and nearly killing him.

I mean, we almost had this horrific mass murder followed up with a horrific accident. The horrific mass murder because of the high-capacity magazine and the horrific accident because of the armed person there who, with good intention, wanted to end something that was—that was going really bad.

Senator DURBIN. Thank you.

Thank you, Mr. Chairman.

Chairman LEAHY. Senator Graham.

Senator GRAHAM. Thank you, Mr. Chairman.

I think I am speaking for a lot of people when they say we are heartbroken when a family member is taken through an act of gun violence, whether it be a child or anyone else, but particularly children. That is just a heartbreaking episode in society. And I think most people would appreciate the fact that there are thousands, if not millions, of Americans who saved their families from home invasions or violent assault because they had a gun to protect themselves. And most of us are glad it ended well for you. So those are the two bookends.

And you mentioned, Captain Kelly—and I very much appreciate your being here and your service to the country—about you and your wife are reasonable Americans. I do not doubt that one bit. I am sure you are. The question is: Am I a reasonable American if I oppose this bill? Am I a reasonable American believing that the Constitution says guns commonly used by the population sold for legitimate purposes? Being a supporter of the Second Amendment, I do not want to own a gun to attack my Government. That is not what I think a legitimate purpose is.

Let us talk about a real-world incident that happened in Loganville, Georgia, on January 4, 2013. My basic premise is that one bullet in the hand of a mentally unstable person or a convicted felon is one too many. Six bullets in the hands of a mother protecting her twin 9-year-olds may not be enough. So I have got a chart here. At the very top is a .38 revolver, and on the right is a 9-millimeter pistol that holds 15 rounds.

Does everybody on the panel agree that a convicted felon should not have either one of those guns? Does everybody agree that a mentally unstable person should not have either one of those pistols? Okay. Common ground there.

Put yourself in the shoes of the mother. The guy broke into the home. She ran upstairs. She hid in a closet. She got on the phone to the police. And she was talking to her husband in real time. The intruder broke into the home, had a crowbar, and he found them in the closet. And they were confronted face to face. According to media reports, her husband said, "Shoot, shoot." She emptied the gun, a six-shot revolver. The guy was hit five of the six times. He was able still to get up and drive away.

My question is: Put your family member in that situation. Would I be a reasonable American to want my family to have the 15-round magazine in a semiautomatic weapon to make sure that if there are two intruders, she does not run out of bullets? Am I an unreasonable person for saying that in that situation the 15-round magazine makes sense?

Well, I will say I do not believe I am. So I can give you an example of where a 15-round magazine could make the difference between protecting a family if there is more than one attacker.

Now, back to your point, Captain Kelly. In the situation you described, I do not want that person to have one bullet or one gun. And the point of regulating magazines is to interrupt the shooter. That is the point of all this.

And I guess what I am saying is that we live in a world where there are 4 million high-capacity magazines out there or more. I think the best way to interrupt the shooter if they come to a schoolhouse is not to try to deny the woman in Atlanta the ability to have more than 10 rounds, but to have somebody like you, Chief Johnson, meet them when they come into the door. I think that is the best way to do it.

Now, my good friend Joe Biden, who we have very spirited conversations about a lot of things, was online recently talking to someone in California who mentioned the fact, what if there is an earthquake out here and there is a lawless situation? In 1992, you had the riots in Los Angeles. I think it was the King event. But you could find yourself in this country in a lawless environment through a natural disaster or a riot, and the story was about a place called Koreatown. There were marauding gangs going throughout the area burning stores, looting and robbing and raping. And the Vice President said, in response to, "That is why I want my AR-15," he said, "No, you would be better off with a 12-gauge shotgun."

Well, that is his opinion and I respect it. I have an AR-15 at home, and I have not hurt anybody, and I do not intend to do it. But I think I would be better off protecting my business or my fam-

ily if there was law-and-order breakdown in my community, people roaming around my neighborhood, to have the AR-15, and I do not think that makes me an unreasonable person.

Now, Ms. Trotter, when you mentioned that you are speaking on behalf of millions of women out there who believe that an AR-15 makes them safer, there were a lot of giggles in the room, and I think that explains the dilemma we have. The people who were giggling were saying to you, "That is crazy. Nobody I know thinks that way." Which reminds me of the Harvard professor who said, "I cannot believe McGovern lost. Everybody I know voted for him." And I bet there are people on our side that cannot believe Obama won because everybody they know voted against him.

The point is that we have different perspectives on this. And the reason I am going to oppose the legislation, Chief Johnson, is because I respect what you do as a law enforcement officer. Has your budget been cut?

Chief JOHNSON. Yes.

Senator GRAHAM. Do you think it will be cut in the future?

Chief JOHNSON. I am optimistic that it will not.

Senator GRAHAM. Well, I hope you are right, but I can tell people throughout this land, because of the fiscal state of affairs we have, there will be less police officers, not more, over the next decade. Response times are going to be less, not more.

So, Captain Kelly, I really do want to get guns out of the hands of the wrong people. I honestly believe that if we just arbitrarily say nobody in this country can own a 10-round magazine in the future, the people who own them are the people we are trying to combat to begin with, and there can be a situation where a mother runs out of bullets because of something we do here.

I cannot prevent every bad outcome, but I do know and I do believe in the bottom of my heart I am not an unreasonable person for saying that in some circumstances the 15-round magazine makes perfect sense and in some circumstances the AR-15 makes perfect sense. And I think our efforts to solve a problem that exists in the real world out there from Washington by having more gun laws that really do not hit the mark, so to speak, politically or situationally, that we are off base, but this is why we have these hearings. And I really do appreciate the fact that we have these hearings.

Professor "Kopel"—"Koppel"?

Professor KOPEL. Either one.

Senator GRAHAM. Okay. Some people on our side say—and I will wrap this up, Mr. Chairman—that it is unconstitutional to put a limit on magazine size. Do you agree with that?

Professor KOPEL. I think if we follow Senator Schumer's approach and say we are going to follow what the *District of Columbia v. Heller* Supreme Court decision says, what that tells you is the core of the Second Amendment is the firearms and accessories that are commonly owned by law-abiding people for legitimate purposes.

Senator GRAHAM. Is it constitutional to say 10 rounds versus 15?

Professor KOPEL. Ten is plainly unconstitutional because, as I was trying to explain to Senator Durbin, magazines of up to 19 are common on semiautomatic handguns and up to 30 on rifles.

Senator GRAHAM. Okay. I will end with this, Mr. Chairman. I do not know if 10 versus 19 is common or uncommon. I do know that 10 versus 19 in the hands of the wrong person is a complete disaster. I do know that six bullets in the hands of a woman trying to defend her children may not be enough. So I do not look at it from some academic debate.

Let us agree on one thing. One bullet in the hands of the wrong person we should all try to prevent. But when you start telling me that I am unreasonable for wanting that woman to have more than six bullets or to have an AR-15 if people are roaming around my neighborhood, I reject the concept.

Chairman LEAHY. Thank you, Senator.

Senator Whitehouse. And then after Senator Whitehouse, Senator Lee. Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Mr. Chairman.

Mr. Chairman, I have heard testimony in this hearing that the Federal gun crime prosecutions number 62 per year, and that, "We do not prosecute any." And I was surprised to hear that testimony because I was a United States Attorney. And in the time that I was United States Attorney, it became an absolute priority of the Department of Justice to prosecute firearms.

So I went to every police department in my State to talk up what we could do with gun criminals. We set up a special procedure where the Attorney General's office, which has criminal jurisdiction in Rhode Island, and our office viewed gun crimes together to make sure they were sent to the place where they could get the most effective treatment. And I believe that that continues, although I am no longer a U.S. Attorney.

So I pulled up some quick statistics, and according to the Executive Office at United States Attorneys, in 2012 more than 11,700 defendants were charged with Federal gun crimes, which is a lot more than not doing it and a lot more than 62. And the numbers are up at the Department of Justice since 2000 and 2001 by more than 3,000 prosecutions.

So we may have a debate about whether more should be done and who at the witness table actually wants more to be done in the way of gun prosecutions, but I think to pretend that the number is in double digits or that the number is zero is flagrantly wrong and I think inconsistent with the type of testimony that Senators should rely on in a situation like this.

I would also add that there has been repeated testimony, also mentioned by Senator Durbin, that criminals will not subject themselves to a background check. And my response to that is that is exactly the point. Criminals will not subject themselves to a background check so they do not go into the gun shops; and if they do, they get prevented from buying a gun. So instead they go to illegal means. They go primarily to the main way we distribute guns without a background check, which is to the gun shows.

And so I think to the extent we can expand the background check, the very fact that the criminals will not subject themselves to a background check provides the kind of prevention that Senator Graham was talking about, to keep the guns out of the hands of criminals in the very first case.

Chief Johnson, tell me a little bit about the men and women with whom you serve in law enforcement and the type of training and screening that is important both in gun use, in gun safety, in situational awareness, before they are put in a position where they are expected to defend the public with firearms? Is that something you just give somebody a gun and say get in there and go defend the community? Or how rigorous and how cautious are you about the training required?

Chief JOHNSON. The process starts well before we even offer you a badge. And it is a very robust, in-depth, psychological review of whether or not we are even going to allow you to enter the force itself. All departments are universal in this issue. It includes psychological, polygraph, and other means to determine whether or not you have the fiber to have that awesome responsibility to carry a gun. The training is exhaustive—weeks and weeks of training on how to use the weapon, and tactically how to deal with it, how to care for it, and how to safeguard that weapon.

But it does not stop there. Once you are out in the field, a very robust psychological services section, yearly training, and other safety equipment that must be carried. This talk about teachers having guns—

Senator WHITEHOUSE. That is actually where I was going to go. But before we get to teachers, to your knowledge, does the military have similar types of concerns and programs with respect to arming men and women who serve in our armed forces?

Chief JOHNSON. It is my understanding, talking with my associates in the military, that public policing mirrors much of what the military does.

Senator WHITEHOUSE. So against that background, tell me how much sense you think it makes to have our line of defense be armed teachers.

Chief JOHNSON. Certainly when we have this discussion, you have to—does a teacher have the inner fiber to carry that weapon, the awesome responsibility? You are a teacher in a classroom. You are an educator. You dedicated your entire life to that pursuit, but you have got a sidearm strapped to yourself? And you had better have it all the time, because if you put it in your desk drawer, your purse, or your briefcase—and where you going to leave it?

Let me tell you something. Carrying this weapon on my side has been a pain all these years. I am glad I have it if I need it, but let me tell you, it is an awesome responsibility. And what do you do in the summertime when you dress down? How are you going to safeguard that weapon from a classroom full of 16-year-old boys that want to touch it? How are you going to do that?

And certainly, the holsters, I am spending \$200 apiece just for the holsters so you cannot rip it from my side.

So these are all the factors that in a robust, psychological service section we all face catastrophic changes in our lives as we go through divorce and other things that bring us down. But you need people to step in, like we have in policing, that notice those things and deal with them. This is a major issue.

Senator WHITEHOUSE. We have had cases, including a case in Rhode Island, in which trained police officers who were off duty responded to a situation, and because they had not been adequately

trained in how to respond off duty and because they were out of uniform, it led to tragic blue-on-blue events.

Presumably that would have some bearing on armed police officers responding to an event in which a lot of armed and untrained teachers are trying to defend students in a school.

Chief JOHNSON. Well, that is a very important point. Two years ago in Baltimore City, an on-duty officer in plainclothes was shot by uniformed on-duty personnel, and they worked the same shift. It is just in the darkness of the night they could not tell. And as Captain Kelly has pointed out, that is a major issue in the Tucson shooting.

Senator WHITEHOUSE. And, Ms. Trotter, a quick question. Sarah McKinley, in defending her home, used a Remington 870 Express 12-gauge shotgun that would not be banned under this statute, correct? Under the proposed statute?

Ms. TROTTER. I do not remember what type of weapon she used.

Senator WHITEHOUSE. Well, trust me, that is what it was. And it would not be banned under the statute. So it does not—I think it proves the point that with ordinary firearms, not 100-magazine, peculiar types of artifacts, people are quite capable of defending themselves. In fact, that was your example.

Ms. TROTTER. I respectfully disagree. I understand that you are also a graduate of the University of Virginia School of Law, and you were close to Monticello where Thomas Jefferson penned our Declaration of Independence and close to Montpelier where James Madison was instrumental in drafting the Bill of Rights. And I think you can understand that, as a woman, I think it is very important not to place undue burdens on our Second Amendment right to choose to defend ourselves.

Senator WHITEHOUSE. Oh, I have no objection—

Ms. TROTTER. I do not know what weapon she used—

Senator WHITEHOUSE [continuing]. To that point. My point is that the example you used is one that would not bear in argument against the proposal that is before us, because that Remington 870 Express is a weapon that would be perfectly allowed.

Ms. TROTTER. So would it have been unreasonable for her to use a different gun to protect her child?

Senator WHITEHOUSE. I think that if she was using a 100 weapon—let me put it another way. She would clearly have an adequate ability to protect her family—

Ms. TROTTER. How can you say that?

Senator WHITEHOUSE [continuing]. Without the need for a 100-round piece of weaponry.

Ms. TROTTER. How can you say that? You are a large man, and you are not a teenage—

[Laughter.]

Ms. TROTTER. Tall. A tall man. You are not a young mother who has a young child with her. And I am passionate about this position. Because you cannot understand. You are not a woman stuck in her house having to defend her children, not able to leave her child, not able to go seek safety, on the phone with 911. And she cannot get the police there fast enough to protect her child.

Senator WHITEHOUSE. And my point simply—

Ms. TROTTER. And she is not used to being in a firefight.

Senator WHITEHOUSE. And my point simply is that she did it adequately and successfully with lawful firearms and without the kind of firepower that was brought to bear so that the 12th, 13th, 14th shots could be fired by the man who shot Gabby Giffords—

Chairman LEAHY. I am going to have to—and I will let you go back. There is another round.

There are a number of things I could say as a gun owner, but I will pass up on the opportunity and go to Senator Lee.

Senator LEE. Thank you, Mr. Chairman. And I would like to thank each of the distinguished members of our panel today for enduring now over 2 hours of this hearing. As a more junior Member of the Committee who sometimes gets to ask questions last or second to last, I am especially appreciative of your willingness to stay this long.

I think every one of us, both here in this room and everyone watching on television, has been horrified by the incidents that occurred in Newtown, in Tucson, and elsewhere. And I do not think there is one of us that would not like us to find a way as a society to put an end to events like this.

It would be my preference if we could find a way to put an end to events like this, without doing violence to the Constitution and also without leaving law-abiding citizens more vulnerable to crime.

There are a number of statistics on this, but one statistic I have read has indicated that about 2.5 million times a year in America, a gun is used to protect its owner, its possessor, from a crime. That is quite significant, and that is a fact that we need to take into account.

There has been a lot of reference today to the fact that the protections of the Constitution—the protections of the Second Amendment right to bear arms—are not unlimited. And I agree that they are not unlimited. There are limits. I think it is important for us from time to time to focus on what those limits are.

The Supreme Court in *District of Columbia v. Heller* held that the guns that are within the zone of protection of the Second Amendment are those that are typically possessed by law-abiding citizens for lawful purposes.

Why don't we start with you, Professor Kopel. Can you tell me, is a gun, a semiautomatic weapon, whether a rifle or a handgun, that holds more than 10 rounds in its ammunition magazine one that could fairly be characterized as one that is typically possessed by law-abiding citizens for lawful purposes?

Professor KOPEL. In handguns, semiautomatics are 81 percent of new handguns sold. A very large percentage of those have as standard, not as high capacity but as standard factory magazines, magazines between 11 and 19 rounds.

Another thing that is very common, to get back to Senator Whitehouse's issue about the Remington 11–87 shotgun, is Senator Feinstein's bill would outlaw that shotgun if it has a seven-round magazine on it. It comes with a five-round magazine. You can extend it by two or more rounds. And the Feinstein bill would outlaw that very standard home defense shotgun if it simply has a seven-round magazine.

So it is all fine to talk about novelty items on the fringe, like a 100-round drum, but in practice what is at threat of being out-

lawed that people are actually using is their standard-capacity handgun magazines and standard-capacity magazines for rifles and shotguns.

Senator LEE. And what are the law-abiding citizens doing with these? In other words, what are the lawful purposes to which law-abiding citizens are putting these guns, who own them?

Professor KOPEL. Self-defense, target shooting—all the purposes which are lawful to possess a firearm. And I would—regarding what the chief was talking about, about all this extra training that police officers have, well, since I have represented the two leading police training organizations in the U.S. Supreme Court, I would certainly agree that the police have more training for all kinds of reasons, including they have the power to effectuate arrests, which ordinary citizens do not.

But the training, in the view of the police training organizations, the International Law Enforcement Educators and Trainers Association, the International Association of Law Enforcement Firearms Instructors, they believe that the training that is required in most States to obtain a permit to carry a handgun for lawful protection of self—only nine States currently violate that by not letting trained citizens carry—that that is appropriate, sufficient for people to be able to protect themselves, not necessarily to go out and do arrests but to defend themselves. And that includes defending themselves in their place of employment, including if that place of employment happens to be a school.

Senator LEE. One of the arguments that I have frequently heard for making this type of weapon illegal or making any weapon illegal if you are using an ammunition magazine containing more than 10 rounds is that weapons like these are available on a widespread basis; that it is relatively easy to buy them in the sense that, you know, most people may lawfully buy them and own them. And that is used as an argument in favor of restricting access to these weapons.

In your opinion, does that make it more or less constitutionally permissible to restrict their sale?

Professor KOPEL. Well, I think you have hit exactly what *District of Columbia v. Heller* was all about, which, you know, you talk about how often are 100-round drum magazines used in crimes. Pretty rarely. How often are they used in self-defense? Pretty rarely, too.

Handguns are used—70 percent of gun homicides in this country are perpetrated with handguns. And the Supreme Court said the fact that these are very frequently used in crimes does not mean that under the Constitution you can prohibit them.

So the fact that you can point to any particular crime where a gun was misused and say, oh, that proves we have to ban this gun or this accessory, is the opposite of what the Supreme Court is saying. The Supreme Court is saying you do not look only at the misuse of an arm or an accessory, you look at its lawful use. Does it have common, lawful use?

Yes, handguns have common, lawful use. Yes, handgun magazines in the standard size of 11 to 19 rounds have common, lawful use. And yes, the AR-15 rifle, the most popular, best-selling rifle in this country for years, has pervasive lawful use.

Senator LEE. So if we restrict access to these guns, we are limiting the ability of individual Americans, law-abiding Americans, to use them for lawful purposes?

Professor KOPEL. Yes, and the teaching of *Heller* is the fact that criminals may misuse something does not in itself constitute sufficient reason to prohibit law-abiding citizens from using a commonly used firearm.

Senator LEE. Ms. Trotter, do most of the gun-owning women that you know have an inclination to abide by the law in connection with their gun ownership?

Ms. TROTTER. Yes, definitely.

Senator LEE. If we were to ban all weapons that contained an ammunition magazine capable of accommodating more than 10 rounds, would most female gun owners that you know abide by that law?

Ms. TROTTER. Of course.

Senator LEE. What about criminals? What about people who use weapons like these in connection with crimes? Do you think they are as likely to abide by that law?

Ms. TROTTER. By definition, criminals are not abiding by the law.

Senator LEE. Where does that then put women like those that you described, women like those that you represent, what kind of position does this put them in relative to their current position as their ability to defend themselves?

Ms. TROTTER. It disarms the women. It puts them at a severe disadvantage, and it not only affects them, but it affects anybody that they are responsible for—their children, elderly relatives, incapacitated family members.

Senator LEE. Okay. Mr. Chairman, I see my time has expired. I have one question for Mr. Johnson, if I could have—Mr. Johnson, according to FBI statistics, about 72 percent of the gun homicides that are committed each year in America are committed with handguns—4 percent with rifles, 4 percent with shotguns, 1 percent with other types of firearms, and then 18 percent that fit into the category of unknown, but 72 percent classified as handguns.

If 72 percent of the gun homicides are being committed with handguns, would that suggest that you would prefer banning handguns as well?

Chief JOHNSON. Our partnership and, frankly, I have been party to no discussion of banning handguns or restricting handguns from women or any other group. I do not want to give up my handguns. We are here today to talk about a universal background check that would help make our Nation safer and limit high-capacity magazines that are used in crimes and violence across America.

Senator LEE. Even though far more people die each year from handgun-inflicted injuries than from assault rifle-inflicted injuries?

Chief JOHNSON. We believe the limit on high-capacity magazines even for handguns is necessary. No more than 10.

Senator LEE. Thank you.

Chairman LEAHY. Thank you.

Senator KLOBUCHAR.

Senator KLOBUCHAR. Thank you very much, Mr. Chairman.

Thank you. I first wanted to just acknowledge all of the families out here who have lost loved ones in shootings. And I especially

wanted to acknowledge Maya Rahamim, who is here from Minnesota, who lost her dad, Reuven, in a horrible shooting at the company that he built and loved, a small business in which he was killed—along with four other employees and a UPS guy who just happened to be there—by a coworker who was mentally unstable. And this just happened this fall. So thank you.

I also was listening to all the statistics here, which are very important. I am a former prosecutor. I believe in evidence. But the statistic that I will never forget is the one from Newtown, Connecticut, shared with me by a relative of one of the young victims in that tragedy. And that is that little Charlotte Bacon loved her Girl Scout troop. And her Girl Scout troop once had 10 girls, and now there are only five left. So we have to remember what this is about as we look at solutions.

For me, as a former prosecutor, I have always believed in enforcing the laws on the books. And, Mr. LaPierre, I made it a major, major focus of our office to prosecute the felon in possession of guns. I think that is clearly part of the solution. You cannot lessen the importance of that as we go forward.

But there are other things as well, including the recommendations that have been made by Vice President Biden and that task force. And I think it is very important that we explore those in addition to enforcing the laws on the books.

I have heard from my sheriffs—Republican sheriffs from all over my State—that there are major issues with background checks. And so I think I would turn to that first, Chief Johnson. We had a guy in Minnesota—this just came out in our paper, the Minneapolis paper—who had killed his parents as a juvenile, got out, somehow got a permit, and was able to obtain guns.

In fact, when they found him, he had 13 guns in his house. And he had a note that he had written to the gunman in Newtown. And he also said in the note, “I am so homicide, I think about killing all the time.” And he was somehow able to get a permit and get those guns. This just came out in our local paper. And I wondered what you see as some of the biggest loopholes—we have talked about gun shows, Internet, private sales—and how you think that could help.

And then I want to get to the thing you talked about, about how you can get those background checks done quickly, because I come from a hunting State. The last thing I want to do is hurt my Uncle Dick in his deer stand. And I want to make sure that what we do works. And so if you could address that?

Chief JOHNSON. There has been great improvement in the Nation. Some statistics show nearly an 800-percent increase in data entered into the National Instant Criminal Background Check System. That is good. But it is not good enough, and we are really failing miserably, nationally, entering that data.

Statistics I have read indicate that nearly 18 States across the Nation submit less than 100 records to the NICS system on a regular basis. We have to improve that. Maryland has to improve that, in fact. We are not doing enough in Maryland.

Senator KLOBUCHAR. And is it true that about 40 percent of gun sales take place at the gun shows?

Chief JOHNSON. Statistics reveal that 40 percent of gun sales take place at gun shows and other non-licensed dealer sales arrangements, nearly 6.6 million guns through that process a year.

Senator KLOBUCHAR. And are more and more people now using the Internet to buy guns, as we see in other areas?

Chief JOHNSON. I sat with my detectives in the gun squad for weeks before I had a chance to come—the honor to come here today, and they regularly used Internet, PennySaver classified ads. They will go outside the State in many cases. A variety of methods are used, including straw purchasers.

Senator KLOBUCHAR. And you talked a little bit earlier about how quickly these background checks can get done. You compared it to issuing a ticket. If you could answer that.

Chief JOHNSON. The analysis that we have conducted, the information I have, I believe it is 92 percent of NICS background checks come back in less than a minute and half when you go to a licensed Federal dealer. And, certainly, that is much quicker than I can write a citation. And I think that should be universal. That is what we are calling for. That is what is going to make our Nation safer.

Senator KLOBUCHAR. Mr. LaPierre, do you want to respond about the timing on the checks?

Mr. LAPIERRE. Sure, I will respond, yes, Senator, to a couple points.

One, the chief is talking about using the Internet to do interstate sales. That is a Federal crime and should be prosecuted. The only way you can do a sale is to go through a dealer, and it has to be cleared through a background check.

The Senator from Rhode Island talked about the prosecution data. I get all that from the Syracuse University TRAC data, which is who tracks the initial—the prosecution of the Federal gun laws where that is the initial charge.

And why Project Exile worked in Richmond, Virginia, is what they started to do is they caught a drug dealer with a gun. They put signs up all over the city saying, “If you have an illegal gun in Richmond, under Federal law you are going to be prosecuted 100 percent of the time.” Drug dealers, gangs, and felons stopped carrying guns.

So the 62 statistic, Senator, was for lying on the background check, not total prosecutions for the entire country.

Senator KLOBUCHAR. Mr. LaPierre, if you could—and I know you want to discuss this with Senator Whitehouse, but I have my question about the timing. Do you agree with the chief here that we could do this quickly? And all we are trying to do here is close some of these loopholes so we expand some of the background checks, but that it still could be done in a way that will not interfere with law-abiding gun owners.

Mr. LAPIERRE. Well, gun shows right now, according to all the surveys, are not a source of crime guns, anyway. It is 1.7 percent. Where criminals are getting guns is the black market, they are stealing them. They are not getting them through gun shows.

But if you are talking about expanding a system that is already overloaded, where they are not doing any prosecutions, basically, even if they catch somebody—they are saying it is like Bonnie and Clyde. They catch Clyde, and he goes home and says, “Bonnie, they

did not do anything to me, so let us go get a gun and commit our crime.”

I mean, if you are talking about expanding that system to every hunter, to every family member, every relative all over the United States, when the system already cannot handle what it has, you are creating an enormous Federal bureaucracy. It is only going to hit law-abiding people, not criminals.

Honest people are going to be entrapped into committing crimes they had no intention to commit. It is an unworkable, universal nightmare bureaucracy being imposed under the Federal Government.

I just do not think that law-abiding people want every gun sale in the country to be under the thumb of the Federal Government.

Senator KLOBUCHAR. But it is my understanding that when people buy guns, they do undergo a background check. We know that and we are just simply trying to close some of these loopholes.

Chief, do you want to respond to this?

Chief JOHNSON. Well, certainly when a weapon is purchased through a licensed Federal dealer, they undergo a background check. But as we have said many times here today, 40 percent of these guns are being sold outside that process. This is not unreasonable. And certainly I do not consider it a restriction. If I buy a gun next year, you know, through a private seller, I will go to a licensed dealer to do it. This is not unreasonable.

Senator KLOBUCHAR. And, Captain Kelly, I think you really said it best at the very beginning of this lengthy hearing when you talked about your belief in the Second Amendment and in those rights, but with those rights comes responsibility. And you talked about the responsibility to make sure that these guns do not get into the hands of criminals and terrorists and those with mental illness. And do you see this, the background check, as a way of helping to get at this problem?

Captain KELLY. Gabby and I are both responsible gun owners. I bought a hunting rifle from Walmart a few months ago, and I went through a background check. It did not take very long. And, you know, they were able to very clearly determine that, you know, I was a responsible person.

You know, in Tucson and in many of these cases, there are people that either would have failed a background check if the right data was in the system, like in the case of Jared Loughner, and certainly in that case he would have had the option to go to a gun show or a private seller, and I imagine he would have gotten a weapon. You know, he was a pretty marginalized person. I would imagine—and quite mentally ill and did not have much of a community around him. I imagine in that case, if he would have not been able to get—not pass a background check, and—if there was a universal background check. I actually do not see him going on the black market to get a gun. And maybe if he did, maybe it would have taken him a long time to do that, to find the right place to go. And maybe in that period of time, just maybe, his parents would have gotten him some treatment, got him on medication. And if they did, from what his attorney and the prosecutors have told me, on medication he would have never done what he did on that day. I mean, so you might not be able to prevent every single

criminal from getting a weapon, but a universal background check is a common-sense thing to do. I mean, if we do them for Federal licensed dealers, why cannot we just do it at the gun show and for a private sale?

Senator KLOBUCHAR. Thank you very much. And I was thinking, as I listened to you, about all the people in this room that have thought those maybes too. Maybe if this had been in place, maybe if that had been in place. And I think your acknowledgment that it is not one solution for every person, for every case, that we have to enforce the laws, but we have to do better with background checks, and with the number of the proposals recommended out there by Vice President Biden's commission, that we can do better.

Thank you.

Chairman LEAHY. Thank you.

I want to welcome one of our three new Members to the Committee, Senator Cruz of Texas. Senator Cruz, you have the floor. I apologize that the allergies are causing my voice to be so bad.

Senator CRUZ. Well, thank you, Mr. Chairman, and it is a pleasure to serve with you and all the Members of this Committee.

I want to begin by thanking each of the distinguished witnesses who have come here today. Thank you for taking your time. In particular, I want to thank you, Captain Kelly, for your service to this country and for your wife's extraordinary journey, for her coming here. Congresswoman Giffords has been lifted up in prayer by millions of Americans, and her heroic recovery is inspirational. And please know that you and your family will continue in our prayers in the years to come.

My wife and I have two little girls. They are 4 and 2. I think no parent, and in particular no parent of young children, could watch what happened in Newtown without being utterly horrified—utterly horrified at the depravity of a deranged criminal who would senselessly murder 20 young children at an elementary school.

Unfortunately, in Washington, emotion I think often leads to bad policies. When a tragedy occurs, often this body rushes to act. And at times it seems the considerations of this body operate in a fact-free zone. I will suggest a philosophy that I think should guide this body in assessing gun violence, and then I would like to highlight and ask a few questions on a couple of points that I think are particularly salient to addressing this issue.

The philosophy I would suggest makes sense is that we should be vigorous and unrelenting in working to prevent, to deter, and to punish violent criminals. I have spent a substantial portion of my professional life working in law enforcement, and the tragedies that are inflicted on innocent Americans every day by criminals are heartbreaking, and we need to do more to prevent them.

At the same time, I think we should remain vigilant in protecting the constitutional rights of law-abiding citizens. And I think far too often the approaches that have been suggested by this Congress to the issue of gun violence restrict the liberties of law-abiding citizens rather than targeting the violent criminals that we should be targeting.

And I would point out that I hope some of the passion we have seen from Members of this Committee with respect to the need to prevent violent crime will be reflected equally should we find our-

selves in a judicial confirmation hearing with a judicial nominee who has a record of abusing the exclusionary rule to exclude evidence that results in a violent criminal walking free and being able to commit yet another crime. I hope we see exactly the same passion devoted to assessing whether judicial nominees will enforce our criminal laws and not frustrate the administration of justice.

Three points I think are particularly salient. The first is, in my judgment, the proposed assault weapons ban is a singularly ineffective piece of legislation.

I was having a conversation recently with a loved one in my family who asked a very reasonable question. She said, "Why do regular people need machine guns?" And, you know, one of the things that happens in this debate is the phrase "assault weapons ban" gets a lot of people really concerned, and they assume, much like the phrase "military-style weapons," that we are talking about ordinary citizens running around with M-16s and Uzis that are fully automatic.

Fully automatic machine guns are already functionally illegal. Ordinary citizens cannot own them absent very, very heavy regulation. This entire discussion does not concern machine guns, and yet I would venture to say a large percentage of Americans do not understand that.

I want to begin by talking about the assault weapons ban as it was enforced before, and I would ask for slide number 1.

The assault weapons ban that used to be in effect, according to the Department of Justice, "failed to reduce the average number of victims per gun murder incident or multiple gunshot wound victims."

Now, that is the assessment of the United States Department of Justice, and that is in 1994. That was the Janet Reno Department of Justice under President Clinton that said the assault weapons ban was singularly ineffective.

If we could move to the second slide?

The Department of Justice likewise concluded that the assault weapons ban, "under it there has been no discernible reduction in the lethality and injuriousness of gun violence."

So the reaction to this tragedy in Newtown is for a lot of elected officials in Washington to rush to re-enact a law that, according to the Department of Justice, did absolutely nothing to reduce gun violence.

Now, why is that? That is not accidental. Because the assault weapons ban, if it does not ban machine guns, what does it ban? And what it bans, I would suggest to you, are scary-looking guns.

If we could move to slide 3.

This is a photograph of a Remington 750. It is one of the most popular hunting rifles in America. This rifle would be entirely legal under this so-called assault weapons ban.

Now, I have a question for you, Mr. LaPierre. Functionally, in terms of the operation of this firearm—this is a semiautomatic firearm. You pull the trigger once, one bullet comes out. Is the operational firing mechanism in this firearm materially different from the so-called assault weapons ban that this bill is targeted at?

Mr. LAPIERRE. No, it is not.

Senator CRUZ. Now, what the assault weapons ban instead targets are cosmetic features. So, for example, I am holding in my hand a pistol grip. Under this proposed legislation, if this piece of plastic, this pistol grip, were attached to this rifle, it would suddenly become a banned assault weapon.

Now, I would ask you, Mr. LaPierre, are you aware of any evidence to suggest that attaching a piece of plastic to this rifle would make it in any way whatsoever even slightly more dangerous?

Mr. LAPIERRE. No, the problem with the bill that Senator Feinstein introduced is it is based on falsehoods directed at people who do not understand firearms, to convince them that the performance characteristics of guns they are trying to ban through that bill are different than the performance characteristics they are not trying to ban. "They make bigger holes." "They are rapid-fire." "They spray bullets." "They are more powerful." "They penetrate heavy armor."

All of that is simply not true. I mean, the AR-15 uses a .223, and then I hear in the media that no deer hunter would use something that powerful. I mean, .243s, .270s, 25.06, 30.06, .308s—dozens of other calibers used in hunting are more powerful.

Senator CRUZ. So let me make sure I understand that right. This deer rifle, which is entirely legal and is used by millions of Americans, is sold in the identical caliber as the so-called assault weapons ban, although those look scarier because they have a piece of plastic attached to them.

Mr. LAPIERRE. And the Ruger Mini-14, which Senator Feinstein exempts in her bill, uses .223. The AR-15, which has the handle on the bottom, which she prohibits, uses the same.

Senator CRUZ. I am out of time. I want to make one final point, if I may, which is there has been much attention drawn to gun shows, and indeed the statistic of 40 percent has been bandied about. Now, that statistic is unfortunately based on a study that occurred before the background check went into effect, and so it is a highly dubious figure.

But I do want to point to what the Department of Justice has said, which is in slide 5. The Department of Justice has said that firearms used in crimes, 1.9 percent of those firearms come from gun shows. So, again, in response to this crime, this body does not act to enact anti-crime legislation to prevent violent crimes. Instead it targets 1.9 percent of the guns, and a substantial portion of those guns were sold by licensed firearms dealers who already conducted a background check. So even that 1.9 percent, a substantial portion are already subject to a background check.

I would ask, Mr. Chairman, if we have a second round, I would like to additionally get into the effectiveness, or lack thereof, of gun controls.

Chairman LEAHY. I am going to leave the record open for questions. I think, because of the Senate's schedule this afternoon, we probably will not have a second round. But I will leave the record open so the Senator can submit additional questions. I have further questions as well, so I will not have time to speak either and will submit my questions.

Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman. Thank you to all the witnesses, especially you, Captain Kelly, and thanks to your beautiful wife—and I mean beautiful in every way.

My wife, Frannie, and I were heartbroken for the families in Sandy Hook. We were heartbroken for the families in Tucson. For those of you who are listening or watching this hearing in Newtown, I want you to know that Minnesotans have you in our thoughts and our prayers and that we have shared in your grief. We shared it when we lost lives at a sign factory—Maya is here. She lost her father. This was in Minneapolis in September.

We share it every time we hear gunshots and ambulance sirens interrupting an otherwise quiet school night. We share it every time we bury one of our sons or daughters.

I know that a group of students from Red Lake Reservation in Minnesota, students who lost their classmates to gun violence, made the 1,500-mile drive to Newtown a few days before Christmas just to let the people in Newtown know that they are not alone, we are all in this together.

Over the past month or so, I have been talking to my constituents about their ideas on how to make our communities safer. I travel the State to meet with hunters and school officials, with law enforcement officers, with mental health experts. I have convened roundtable discussions, and I have had many, many conversations. And what I have learned is that there is a balance to be struck here. We can honor the Second Amendment, and we can honor Minnesota's culture of responsible gun ownership while taking basic measures that will make our kids and our communities safer.

So I have cosponsored a bill to limit the number of rounds in a magazine. I have cosponsored a bill to require background checks at gun shows. I have cosponsored Senator Feinstein's bill to ban assault weapons. I am reviewing legislation to address gun trafficking. I have supported funding for law enforcement programs, and I work every day to carry out the work Paul Wellstone—his unfinished work to improve our Nation's mental health system.

Tomorrow I will introduce the Mental Health in Schools Act which will improve access to mental health care for kids because catching these issues at an early age is really important. And I want to be careful here that we do not stigmatize mental illness.

The vast majority of people with mental illness are no more violent than the rest of the population. In fact, they are more likely to be the victims of violence. But these recent events have caused us as a Nation to scrutinize our failed mental health and system, and I am glad we are talking about this issue in a serious way.

Police Chief Johnson, I met with some mothers from the Mountain View School District in Minnesota whose children's lives and their own lives were changed for the better because their kids got access to mental health care that they needed at an early age. And they got treatment, and their lives were improved, and their moms' lives were improved.

As a community leader and a law enforcement official, do you think it will benefit our communities if we are able to use schools to improve access to mental health care?

Chief JOHNSON. I applaud your initiatives and your work, Senator, and the answer is absolutely. As a father with a child that

has mental health issues, I think this is absolutely essential. And my child has access to medical care that she needs, but the record shows and reflects that nearly half of children and adults in this Nation who are diagnosed with mental health issues do not have access to the care they need, and it gets even worse after the age of 18. And we are seeing this in crimes of violence, and we are seeing this in crimes all across our Nation and in my jurisdiction. It is a major problem. And I do recognize that most people with mental health issues do not go on to commit violent crimes. However, we have seen over and over again it seems to be a common thread or theme or issue that we must deal with.

Senator FRANKEN. Again, Police Chief Johnson, I have heard from some gun owners who are worried that Congress is going to outlaw features that they really like in guns, things like pistol grips and barrel shrouds and threaded barrels. Some say that these features are merely cosmetic, but it seems to me that a lot of these features are not just cosmetic, they are functional.

Can you explain why a pistol grip in the right place makes a functional difference, why it is not just a piece of plastic, why collapsible stocks present a danger, why bullet buttons and some of the other features are dangerous? I think this is a crucial point.

Chief JOHNSON. I agree completely. It is not just about the capacity of the weapon to handle numerous rounds, which obviously is absolutely critical in this discussion. And, again, we believe no more than 10.

We use that weapon in policing because of its tactical capability, its ability to cool down and handle round after round after round; its ability—it is rugged, it is ruggedized, it is meant for a combat or environment that one would be placed in facing adversaries, human beings, people. That weapon can be retrofitted with other devices to enhance your offensive capability.

The weapon itself has features to adjust it, optics sights, for example, that can cost hundreds of dollars—and I have shot this weapon many times—that would enhance your capability in various tactical maneuvers, whether it is from the shoulder or the hip, whether you choose to spray fire that weapon or individually shoot from the shoulder. The optic sights are amazing, the technology advances that weapon has.

That weapon is the weapon of our time. It is the place that we find ourselves in today. And, certainly, I believe it is meant for the battlefield and a public safety environment only.

Senator FRANKEN. Thank you.

Mr. Chairman, before I yield my time, I just would like to submit the testimony of Miya Rahamim, who is here today. She lost her father in a shooting in September in Minneapolis. And I would just like unanimous consent to submit her testimony for the record.

Chairman LEAHY. It will be. As Senator Grassley and I both indicated earlier, there will be other statements for the record, as the record will be kept open for questions.

[The prepared statement of Miya Rahamim appears as a submission for the record.]

Chairman LEAHY. As I also indicated earlier, Senator Hatch, a very senior Member of this Committee, had to be at two different committees. And I yield now to his time, and then we will go to

the next Republican. After we go back, it will be, of course, Senator Flake.

Senator Hatch.

Senator HATCH. Well, thank you so much, Mr. Chairman, and I thank all of you for being here today.

Captain Kelly, I appreciate you and your wife and your testimony and your feelings very much. And I appreciated much of your testimony, and I am grateful that you would take the time to be with us, and it was wonderful to see your wife again.

Let me go to you, Mr. LaPierre. President Obama has issued 23 Executive actions on gun violence. Can you please discuss the commonalities between your organization, the NRA, and the Obama administration when it comes to finding ways to reduce gun violence?

Mr. LAPIERRE. Well, I mean, what we think works—and we support what works—is what NRA has done historically. I have talked about our Eddie Eagle child safety program, which we put more money into than anybody in the country, that has cut accidents to the lowest level ever.

We support enforcing the Federal gun laws on the books 100 percent of the time against drug dealers with guns, gangs with guns, felons with guns. That works.

We have supported prison building. You have States like California where they—I think more than any other State in the country they send more inmates back to the street and have to put more back in jail for new crimes committed against their citizens than any other State in the Nation. New York State is, too. I mean, the collapse of the fiscal situation in those States has also collapsed the criminal justice system in those States.

I mean, NRA has always supported what works. We have 11,000 police instructors, and we represent honest people all over this country.

There are 25,000 violent crimes a week in this country. The innocent are being preyed upon. The statistics are numbing. Those 911 calls are horrible.

But at the scene of the crime, it is the criminal and the victim, and victims all over the country want to be able to protect themselves.

I mean, you know, this whole debate almost puts it into two different categories. If you are in the elite, you get bodyguards, you get—right here you get high-cap mags with semiautomatics protecting this whole Capitol. The titans of industry get the bodyguards whenever they want. Criminals do not obey the law anyway; they get what they want. And in the middle is the hard-working, law-abiding, taxpaying American that we are going to make the least capable of defending themselves.

We are going to say, you can have a bolt action rifle, but, boy, you cannot have an AR-15. Or you can have a six-shot revolver, but you cannot have a semiautomatic handgun. You can have four or five or six rounds in your magazine, but if three intruders are breaking down your door, you cannot have 15 rounds because somebody thinks that is reasonable in their opinion. I mean, it—

Senator HATCH. I understand.

Mr. LAPIERRE. People want to be able to protect themselves. That is why people support the Second Amendment, and that is why these bills are so troubling. They do not hit the elites. They do not hit the criminal. They hit the average, hard-working, tax-paying American that gets stuck with all the laws and regulations.

Senator HATCH. I understand that one of the bills will ban well over 2,000 guns. I mean, talking about individual guns.

Mr. LAPIERRE. Senator Feinstein's bill bans all kinds of guns that are used for target shooting, hunting, personal protection. And yet, on the other hand, she exempts guns that have the exact same performance characteristics as the guns she does not ban. Gun owners know the truth. That is why gun owners in this country, the 100 million gun owners, get upset about this stuff. They may be the victim of these lies, about taking the military term "assault" and applying it to civilian firearms. But they know the truth inherently, and they shake their heads, and they go, "None of this makes any sense."

Senator HATCH. Well, I appreciate that.

Ms. Trotter, let me just ask you this: In your testimony you state that all women in jurisdictions that have concealed-carry laws reap the benefits of increased safety, even if they choose not to carry a weapon themselves. Can you please explain why?

Ms. TROTTER. Yes. Mr. LaPierre mentioned that gun owners are very concerned about all these burdens that could be possibly put on law-abiding citizens. And I will tell you that non-gun owners are concerned about this, too, because you do not have to choose to carry to be the beneficiary of laws that allow people to carry. And for women, you reap the benefit of fewer murders, fewer rapes, fewer possibilities of being a victim of violence if the State that you live in does not ban anybody, particularly women, from carrying weapons.

So it is a matter of choice. We are not saying that all women should or need to carry weapons. But we need to protect the Second Amendment right to choose to defend yourself.

Senator HATCH. Well, thank you.

Mr. Kopel, Professor, you wrote an article that appeared in the Wall Street Journal on December 18, 2012. In the article, you point out that firearms are the most heavily regulated consumer product in the United States. Gun control laws are more prevalent now than in the mid-1960s when you could walk into any store and buy a semiautomatic weapon with no questions asked.

Now, in your opinion, the lack of firearms regulations is not a contributing factor to the recent rise in the random mass shootings. So what factors have contributed to the rise in these random shootings? You may have answered this already, but I would like to hear it again if you have not.

Professor KOPEL. No, I have not.

Senator HATCH. Okay.

Professor KOPEL. For one thing there is a copycat effect.

Senator HATCH. Could you put your mic on?

Professor KOPEL. Certainly. There is a copycat effect, and lots of studies of scholars of these—of all kinds of criminals, but especially of these people seeking notoriety, show strong a copycat effect. And

that is something that makes me think we need immediate protection for schools because of the copycat danger right now.

In addition, there was a mass deinstitutionalization of the mentally ill starting in the 1960s and going through the 1980s. Some of that was because of budgetary issues, and a lot of the times the promise was, well, we will put these people in halfway houses so they can be partially in the community, which is a great idea. But then there was never the funding for the halfway houses, and if people walk away, nothing is done to followup. Jared Loughner, Adam Lanza, James Holmes—so many of these perpetrators absolutely would have been civilly committed under the system we had 50 years ago.

We need to move back toward greater possibility for civil commitment for the dangerously, violently mentally ill. It is certainly right, as I think both Senators from Minnesota were saying, that mentally ill people per se are not any more dangerous or violent than anyone else. In fact, sometimes less so.

But there is a subset of them that are dangerously, violently mentally ill, and we need to have them off the streets before they—so that they cannot endanger themselves or others.

Senator HATCH. Well, thank you so much.

Mr. Chairman, I would like to have a statement put into the record following yours and Senator—

Chairman LEAHY. Without objection.

Senator HATCH. Thank you so much.

[The prepared statement of Senator Hatch appears as a submission for the record.]

Senator HATCH. I want to thank all of you for being here. I think it has been an enlightened hearing.

And this is not a simple thing, and I have got to say there are some freedoms among the mentally ill that have to be considered, too. And this is complex. It is not—not easy.

But I can say this, that I think this has been a particularly good panel, and I just appreciate all of you for testifying.

Chairman LEAHY. I thank you for that, Senator Hatch, and I will yield now to Senator Coons.

Senator COONS. Thank you, Chairman Leahy, and thank you for convening this important hearing.

To the panel, thank you for your testimony. And to Captain Kelly and to your wonderful wife, Congresswoman Giffords, thank you for everything you are doing to bring, I think, an important message.

We as a Committee are wrestling here today and we as a country are wrestling with how to respond appropriately and effectively to a whole string of horrific shootings. Whether in Newtown or in Tucson, whether in a Sikh temple or at a state university like Virginia Tech, there are just too many of these incidents piled year upon year.

And I am grateful for all my colleagues who have engaged in this thorough discussion today about how do we balance things.

One of the most important things, I think, is for us to get our facts right. A number of my colleagues have made a great deal of the number of cases of Federal gun prosecutions going down.

But my staff has pulled the most recent report from the Executive Office of the United States Attorneys, and it turns out that the number of defendants charged with Federal gun violations is actually steady. In fact, in 2011, it was 46 percent higher than in 2000. So I just encourage all who are paying attention to scoring at home the numbers, what matters is the number of defendants actually prosecuted with Federal gun violations.

I have got lots of things I would like to touch on, and I did want to say at the outset I am grateful that our Vice President, Joe Biden, has led, I think, a very broad and searching conversation where he has listened, as I have, to folks across the country and, in my case, across my State of Delaware. And I have heard from parents whose children suffer from mental illness and who are really struggling to provide the care that they deserve and need—law enforcement officials, educators, community leaders, gun owners, sportsmen, people who are really concerned about how we strike the right balance and how we make our country safer.

If I could, to Captain Kelly, first, thank you for leading Americans for Responsible Solutions. One of the main ideas you and your wife have advanced is expanded background checks. Could you just explain for me again how it is today that convicted felons are able to get their hands on weapons despite our current background check laws and how we might fix that?

Captain KELLY. Well, currently, certainly Senator Cruz mentioned earlier the statistic of—I think he said 1.9 percent of criminals that committed a crime with a gun——

Senator COONS. Of prisoners.

Captain KELLY. Of prisoners. Well, I want to just look at that for a second.

There is also a statistic that says 80 percent—on a survey done of criminals, 80 percent of criminals got their guns from a private sale or a transfer.

So by closing that part of the existing loophole, which is the fact that with a private sale or transfer, there is no requirement to get a background check, you could effectively reduce the number of guns in the hands of criminals.

And we know from what happened in Tucson that if there was an effective background check, which includes having the mental health data and the person's drug use, in the case of the Tucson shooter, into the system, and if, in fact, there was no gun show loophole, I would contend that he would have had a very difficult time getting a gun.

So the first thing that needs to be done is we certainly need to have a universal background check. If background checks are good enough for somebody who is a Federal firearms licensed dealer, like Walmart, for instance, where I just purchased a gun a couple months ago, a hunting rifle, and I had to go through a background check, why is not that good for other sales, sales from a private individual or sales from somebody who is really kind of in business at a gun show?

Senator COONS. Captain Kelly, if you would, as a gun owner yourself, how do you feel that thorough universal background checks of the types that you describe, either for purchase of weap-

ons or large capacity magazines, how would that affect or infringe your Second Amendment rights?

Captain KELLY. I do not think it would infringe my Second Amendment rights at all. You know, I am—I think I am as strong a supporter of the Second Amendment as anybody on this panel. You know, I have flown 38 combat missions over Iraq and Kuwait defending what I believe is our—defending our Constitution.

You know, I have flown in combat. I have been shot at dozens of times. You know, I find it interesting that often we talk about putting a security guard in the school. That has been brought up a lot. And I actually think, you know, that is better than no security guard in the school. But from my experience of being shot at and what that actually feels like and how chaotic it is, and with the exception of Chief Johnson, I would suspect that not many members of this panel—or even in this room, for that matter—have been in any kind of a fire fight. It is chaos.

I think there are really some very effective things we can do, and one is, Senator, the background check. Let us make it difficult for the criminals, the terrorists, and the mentally ill to get a gun.

Senator COONS. I agree with you, and I have agreed to cosponsor legislation to this affect.

But let me ask Mr. LaPierre. I, just at the outset, want to say I am grateful for the work the NRA in providing training in safe gun ownership to millions of Americans. And I hope you will take into account the data I have offered on gun prosecutions.

But I do disagree with a point you made your testimony. You said—and I think I quote—that background checks will never be universal because criminals will never submit to them. And while that may be true, I think the point that Captain Kelly makes is telling. And if we in combination put in place tougher restrictions on straw purchases and tougher enforcement on those who buy guns legally but then sell them to those who should not have them, and we put in place universal background checks and impose some responsibility on responsible gun owners to report lost or stolen weapons in combination, would not all of these things effectively move us toward a country where the number of those who should not have weapons cannot get access to them?

Mr. LAPIERRE. Senator, what I think you are going to end up with is a huge massive bureaucracy with honestly a huge waste of police resources and money that could go into doing things in the police criminal justice area that would actually save lives.

That study that you were talking about actually says where criminals get their guns—39.5 percent from friends and family, 37 percent from street or black market, 11 percent from licensed dealers, 10 percent by theft, 1.7 percent at gun shows.

Senator COONS. Right.

Mr. LAPIERRE. I just think that if you try to do this universal background check, it ends up being a universal Federal nightmare imposed upon law-abiding people all over this country. Criminals will ignore it. The Federal Government will not prosecute those who fail it. Senator, the Vice President at the meeting we attended said they did not have time to prosecute those types of cases. So what is the point of the whole thing? If you let the criminal and the mentally ill—

Senator COONS. Well, Mr. LaPierre, I am almost out of time. Forgive me for the brief cycle.

Mr. LAPIERRE. Sure.

Senator COONS. Just to take at face value the data you just suggested, it is not just closing the gun show loophole. It is also thoroughly enforcing those who transfer weapons bought legally to those who should not have them. And an awful lot of the folks you cited are getting their hands on weapons inappropriately through so-called straw purchases or through illegal transfers.

I just want to ask a question of Chief Johnson, if I might, because I see, Mr. Chairman, my time is almost up.

I think it is valuable to have the input of law enforcement professionals. In your view, would this sort of a universal background check combined with aggressive enforcement of the transfers to those who should not have them be a huge bureaucratic mess and a waste of police resources? Or might it make a difference on the street for those of you who put your lives on the line for us every day?

Chief JOHNSON. I have to respectfully disagree with Wayne on this issue. Public safety, police, we are ready, we are unified on this issue that a universal background check will make our society a safer place, will make my police officers safer. It is absolutely essential.

Senator COONS. Well, thank you, Chief. Thank you to the panel. I will submit some more questions for the record. I see I am out of time.

Thank you.

Chairman LEAHY. Thank you.

And, again, another new Member of this Committee, Senator Flake of Arizona. I appreciate your being here and your patience in waiting. If it is any consolation, I had that seat years ago.

[Laughter.]

Senator FLAKE. That is good to know. Thank you, Chairman, for convening this. And thank you to the panel for being here, offering such excellent testimony, and for staying so long. I will try not to take my full 7 minutes. But I especially want to thank Mark for being here. And I know that Gabby is watching the proceedings in a room in the back. I just visited here a while ago. And I just want you to know, Mark, and I want Gabby to know how much we miss her here.

I was on a call this morning with a few dozen ranchers, border ranchers in Arizona, and was reminded that this is a practice that she began years ago, to talk about immigration issues and to keep them up to speed and to seek their input. And I have continued that practice. And I can tell you, she offered wonderful representation to the people of southern Arizona and she is missed. And I am so grateful to you and to her for the public service that you have offered in the last year under difficult circumstances and for taking up this new cause. So thank you.

With regard to the Tucson shooting, you mentioned that Jared Loughner had had drug use in the past that might have triggered some kind of entry into a system that he may have been checked, but also the mental health aspect. And that seems to be the difficult problem to solve here, listening to the testimony, is the nexus

between mental illness and some kind of entry into a background system.

In Maryland, I believe it is, there have only been like 56 mental health records provided to the NICS system. Arizona has 120,000 entries, but not interfaced with the system here.

What are the major problems there? And I will take anybody who can comment on this. Perhaps, Chief Johnson, you know, or, Mark, if you have any ideas? Is it solely privacy issues? Many of those have a Federal nexus, and that is something that we can deal with here. So I am interested in why it is that it is so difficult to have some of the mental health records entered into the system.

Chief, first, do you want to take this?

Chief JOHNSON. Well, Governor O'Malley in the State of Maryland last week introduced his plans to increase significantly data into the National Instant Criminal Background Check System. Senator, you are right. Maryland could do much better in this area, no question about it.

Senator FLAKE. Is this an issue with Maryland or any other state? And I am not trying to pick on Maryland at all. I assume it is similar with every state out there. I just had the figures for Maryland. But is that an issue of just resources? Or are there privacy concerns that prevent them from offering this information?

Chief JOHNSON. I think there is confusion. Data that I have seen indicates some 18 States submit less than 100 records to the system. I think there is confusion amongst the medical community, and even fear. How does HIPAA affect the release of this information and this data system? And I do believe, as the President's plan has called for, an incentive to incentivize States to participate would drastically help this problem.

Senator FLAKE. Mark, do you want to comment on that?

Captain KELLY. Yes, Senator. Thank you for your kind words. Gabby misses being here as well.

Of those 121,800 records that Arizona has not submitted to the background check system, I do not know why. I imagine it could be something—it might be a matter of resources. You know, maybe the funding is not there to have the manpower to do that. Possibly, maybe there is not the will. Maybe for some reason in the State of Arizona, maybe they do not have a desire to share that information.

I do not know, but I can guarantee you after this hearing I am going to try to find out.

Senator FLAKE. All right.

Captain KELLY. I will get back to you.

Senator FLAKE. And so will I. I think that that is an area, from the testimony today and what we know of this situation, where we can have, I think, a real impact here. And so I thank you all for your testimony, especially Mark and Gabby for being here.

Captain KELLY. Thank you.

Senator FLAKE. Thank you.

Chairman LEAHY. Thank you, Senator Flake.

Senator Blumenthal, I will recognize you next. And I would just note, as everybody probably well assumes, you and I have had a number of discussions since the tragedy in Connecticut, including one phone call I recall when you were just about to meet with some

of the families. And I have relied a great deal on both your expertise, your law enforcement background, but also the fact that you are from Connecticut.

Senator Blumenthal.

Senator BLUMENTHAL. Thank you. Thank you, Mr. Chairman. I want to express my appreciation to you for your sensitivity and your condolences, and so many of my colleagues for theirs as well and the expressions that we have had this morning, and also, obviously, for convening this hearing, which is a beginning—hardly an end—just a first step in what I hope will be a call to action that Newtown has begun and action that is really bipartisan.

Whatever the impressions that may be left by this morning's proceedings, I think there is a real potential for bipartisan common ground on this issue, because we certainly have more in common than we have in conflict on this issue.

And I speak as a former prosecutor, having served as Attorney General in the State of Connecticut for 20 years, but also as a United States Attorney, a Federal prosecutor, for 4½ years. And I want to thank all of the members of the panel for your patience and your staying power today. It has been a very informative and worthwhile hearing.

But I want to say a particular thanks, as others have, to Captain Kelly and to Gabby Giffords for your courage and strength in being here today, and to all of the victims and their families: Steve Barton, who is here from Connecticut, who was a victim in Aurora. Many of the Sandy Hook families who are not here today I know are here in spirit. Mark and Jackie Barden, who lost their wonderful son, Daniel, at Sandy Hook, wrote a profoundly moving and inspiring piece in today's Washington Post.

And, Mr. Chairman, if there is no objection, I would like to submit it for the record. It is entitled "Make the Debate Over Guns Worthy of Our Son."

Chairman LEAHY. Without objection.

[The article appears as a submission for the record.]

Senator BLUMENTHAL. To Chief Johnson, you are here not only in a personal capacity but, in my view, as representing and reflecting the courage and heroism of the tens of thousands of law enforcement community, police and firefighters and first responders across the country, who every day brave the threat of gunfire and are often outmanned or outgunned by criminals. And I want to thank you for your service to our Nation, as I do Captain Kelly for his in our military.

And just to say, you know, I was in Sandy Hook within hours of the shooting at the fire house where parents went to find out whether their children were alive. And I will never forget the sights and sounds of that day when the grief and pain was expressed in the voices and faces of those parents.

As much evil as there was on that day in Newtown, there was also tremendous heroism and goodness: the heroism and goodness of the educators who perished literally trying to save those children by putting themselves between the bullets and their children; and the heroism of those first responders and police who ran into that building to stop the shooter, not knowing that he was dead when they did; and their being there, in fact, stopped the tragedy.

I want to thank also the community of Sandy Hook. I have spent countless hours there, the better part of 3 weeks after the shooting and, most recently this past weekend, the dedication of a memorial and then time with one of the families. And their strength and courage I think has been an inspiration to the country and very, very important to advancing an agenda of making our Nation safer.

And one way they have done it—one way, not the exclusive or only way—has been through a pledge called the “Sandy Hook Promise.” This promise I would like to read. We have it on a chart here.

It is, “I promise to honor the 26 lives lost at Sandy Hook Elementary School. I promise to do everything I can to encourage and support common-sense solutions that make my community and our country safer from similar acts of violence. I promise that this time there will be change.”

I am proud to say Steve Barton has made the Sandy Hook Promise. Gabby Giffords and Mark Kelly have made the Sandy Hook Promise. Tens of thousands of Americans in Connecticut and across the country have made that promise, as have I.

So I want to ask Mr. LaPierre, will you make the Sandy Hook Promise?

Mr. LAPIERRE. Senator, our Sandy Hook promise is always to make this country safer, which is why we have advocated immediately putting armed security in schools, fixing the mental health system, computerizing the records of those mentally adjudicated. I would hope we could convince some of these companies—I know they have a First Amendment right to do it—to stop putting out such incredibly violent video games that desensitize children to violence. And, finally, we need to enforce the reasonable gun laws on the books, which we do not currently do. That will make—

Senator BLUMENTHAL. Can I take that as a yes?

Mr. LAPIERRE [continuing]. The country safer.

Senator BLUMENTHAL. Can I take that as a yes?

Mr. LAPIERRE. Yes. That is a yes.

Senator BLUMENTHAL. Thank you.

Mr. LAPIERRE. We have 11,000 police—

Senator BLUMENTHAL. And can I invite and urge you to advocate that your members, responsible gun owners—and I thank them for being responsible gun owners—also join in the Sandy Hook Promise?

Mr. LAPIERRE. Senator, there is not a law-abiding firearms owner across this United States that was not torn to pieces by what happened in Sandy Hook. They just do not believe that their constitutional right to own a firearm and the fact that they can protect their family with a firearm caused the problem.

Senator BLUMENTHAL. Let me ask you this, Mr. LaPierre. You and I agree there ought to be more prosecutions of illegal gun possession and illegal gun ownership.

Mr. LAPIERRE. You know, the problem, Senator is I have been up here on this Hill for 20-some years agreeing to that, and nobody does it. And that is the problem. Every time we say we are going to do it. I will make you this bet right now. When President Obama leaves office 4 years from now, his prosecutions will not be much different than they are now. If each U.S. Attorney did ten a month,

they would have 12,000. If they did 20 a month, they would have 24,000. Let us see if we get there.

Senator BLUMENTHAL. Chief Johnson, you have testified very persuasively on the need for better background checks. Do you believe those background checks ought to be applied to ammunition purchases as well as firearms purchases?

Chief JOHNSON. Our organization supports background checks on ammunition sales.

Senator BLUMENTHAL. Thank you.

And, Captain Kelly, I am just about out of time, but I would like to ask you, if you may, you have supported better background checks as an advocate of the Second Amendment, and I join you in believing that Americans have a strong and robust right to possess firearms; it is the law of the land. Do you also believe that better background checks on firearms purchases would help make both Arizona and our Nation safer?

Captain KELLY. Absolutely, Senator. While we were having this hearing—and we certainly do not know the details, but in Phoenix, Arizona, there is another, what seems to be possibly a shooting with multiple victims. And it does not seem like anybody has been killed, but the initial reports are three people injured in Phoenix, Arizona, with multiple shots fired, and there are 50 or so police cars on the scene.

And I certainly agree with you, sir, that, you know, a universal background check that is effective, that has the mental health records in it, that has the criminal records in it, will go a long way to saving people's lives.

Senator BLUMENTHAL. And improving the quality of information in those—

Captain KELLY. Absolutely.

Senator BLUMENTHAL [continuing]. Checks would make a difference.

Let me just again thank the panel. My hope is that Newtown will be remembered not just as a place but as a promise, and that we use this tragedy as a means of transforming the debate, the discussion, the action that we need to make America safer.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Just so everybody understands, we are coming to a close. I will make an exception to the normal rules. Senator Cruz said he had one more question. I will let him do that. Then I will yield to Senator Hirono, the newest Member of this Committee, and she will have the final word.

Senator Cruz.

Senator CRUZ. Thank you, Mr. Chairman, I very much appreciate your allowing me to ask an additional question.

I wanted to ask a question of Chief Johnson. Your testimony here today was in some tension with what I have heard from police officers serving on the ground in the State of Texas, namely that—your testimony, as I understand it, was that, in your judgment, stricter gun control laws would prove effective in limiting crime. And the data I have seen suggests that the evidence does not support it.

If one looks in the District of Columbia, which had the strictest gun control laws in this country and banned firearms, we saw that when the ban was implemented in 1976, there were fewer than 200 homicides. That rose to over 350 in 1988 and to over 450 in 1993. That pattern is reflected across major urban centers. Those urban centers that have the strictest gun bans, for example, the city of Chicago, unfortunately, suffers from, according to the latest statistics, 15.9 murders per 100,000 citizens.

Your city, the city of Baltimore, has 31.3 murders per 100,000 citizens. That contrasts with other major urban areas such as my home town of Houston, which does not have strict gun control laws like the jurisdictions I was talking about, that has a murder rate of 9.2 per 100,000, one-third of Baltimore's. And, in fact, the city of Austin, our capital, has a murder rate of 3.5 per 100,000, one-tenth that of Baltimore.

So my question to you is: In light of the evidence, what empirical data supports your contention that restricting the rights of law-abiding citizens to possess firearms would decrease crime rather than making them more vulnerable to violent criminals? Which is what I would suggest the data indicates has happened when it is been done.

Chief JOHNSON. We know that nearly 2 million prohibited purchasers were stopped from obtaining their firearms since 1994 to 2009. Senator, I would tell you that your homicide statistics would be much greater, and often missed from this conversation is the medical intervention that takes place today at the EMT level in the field to the shock trauma facilities that are very robust in our Nation today. This data would be much higher.

I am here today representing nine major police executive leadership organizations, and for the sake of time, I am not going to read all those. I think they are a matter of the record.

The problem in areas like Baltimore and New York and Chicago, with some of the toughest gun regulations and laws in the Nation, is outside weapons coming in. It is about the background check problem. It is about acquisition of these firearms outside of the normal firearms licensed dealer process. And that is what we have to fix.

In addition, high-capacity magazines are a problem, and certainly we are seeing assault weapons used each and every day in crimes, and police are seizing these weapons each and every day. And, holistically, with the plan that the President has laid out and, frankly, some of the bills that have been put forth, we can make our Nation a much safer place.

Chairman LEAHY. Thank you.

We are fortunate to have three new Members of this Committee: Senator Cruz, Senator Flake, and Senator Hirono. And you, Senator, get the last word.

Senator HIRONO. Are you saving the best for last, is that it?

Chairman LEAHY. Well, I was just saying you get the last word. You are going to have to prove whether it is the best. But I would note to both you and Senator Flake that I occupied that seat.

Senator HIRONO. Good to know.

Chairman LEAHY. And you are very patient in waiting. Also, I thank Senator Blumenthal for representing so well the feelings of the people in Connecticut.

Senator HIRONO.

Senator HIRONO. Thank you so much, Mr. Chairman. And I would like to thank the panel for this very lively discussion on what is a highly emotional subject.

And, Captain Kelly, I would like to thank you for being here because Gabby and I were elected to the House of Representatives in the same year, and her courage continues to inspire us. And I certainly take to heart her testimony today asking us to do something now to reduce gun violence in our country.

And, Chief Johnson, you are literally in the trenches. You are on the firing line and I certainly give much credence to your testimony.

We have a lot of hunters in Hawaii, so I certainly understand their perspective. And to me, this issue is not about abrogating Second Amendment rights. It is about reasonable limits on those rights. And one of those areas that has already been deemed reasonable is the requirement for background checks.

And so what many of us are saying is what has already been deemed reasonable should be a reasonable requirement when guns are sold regardless of how or where they are sold. So I hope that we can reach bipartisan agreement on the reasonable limit of requiring background checks when guns are sold.

Captain Kelly, I do appreciate your starting your testimony today by saying that there is no perfect solution. There are all kinds of antecedent environmental issues and community issues that lead to gun violence, but I believe that we should do that which is reasonable. So nothing is perfect.

I believe that one of the areas of focus for your organization, Americans for Responsible Solutions, is the mental health part of what we ought to be addressing that leads to gun violence.

Do you have some key suggestions that Congress can take to help address the mental illness problem?

Captain KELLY. Well, thank you, Senator.

Well, you know, first of all, compelling States to share with the Federal Government the records, the appropriate records, of adjudicated mental illness and criminal records as well, also within the Federal Government.

I had a conversation with the Vice President, who talked specifically about, you know, intergovernment agencies and why—that there has also been, you know, some issues in certain Federal Government agencies at times getting the records into the background check system.

So if we could improve the system, close the gun show loophole, require background checks for private sellers, I think we will go a long way to preventing many of these murders and mass shootings in this country.

We are not going to stop all of them, but there is certainly a reason that we have 20 times the murder rate—20 times the murder rate—of other developed countries. And I think that is unacceptable.

But, you know, like you said, you know, as an organization, I certainly think Congress can come together on this issue. We realize there is a problem, and it certainly can be solved.

Senator HIRONO. Captain Kelly, it is one thing when someone has already been deemed to show signs of mental illness, and certainly if there has been any kind of an adjudication, that identification is much easier and, therefore, that information should get into our system.

It becomes a lot harder when you are trying to determine whether someone is suffering from mental illness and needs help. And often these kinds of signs manifest themselves certainly in the home, but in the schools. And we do not have a lot of psychologists, therapists in our schools.

Would you also support more of those kinds of personnel in our schools so that we can help these individuals?

Captain KELLY. You know, absolutely. In the case of Jared Loughner in Tucson, Pima Community College was well aware, you know, that he had some form of mental illness. They expelled him over it. Multiple cases of very erratic and disruptive behavior in the classroom and outside the classroom.

But, for some reason, he was not referred, as far as I know, to an appropriate mental health authority for an evaluation. And I know often those need to be voluntary, but his parents, as well.

I mean, there seems in this case that there was a lack of education within the community to get him some effective treatment. And it is really—it is actually really sad. Because in his case, as I know in many other cases, often you will see a man who is paranoid schizophrenic that commits some of these horrific crimes. But with treatment, they would never have done these things.

So, absolutely. I mean, we are going to work—at Americans for Responsible Solutions—we are going to work to help fix the mental health aspect of this, too. It is a big part of it. I agree with Mr. LaPierre on that matter. I mean, that is a major issue. But so is a comprehensive, universal, a good background check, without a loophole, without holes in it, and getting the data into the system. Those are critical things that can make our communities much safer.

Senator HIRONO. Thank you.

I do have one question for Chief Johnson. This is an area that has not been raised today so far. It has to do with an environment that allows bullying to occur in our schools. And sometimes bullying can lead to violent situations. I am sure it has happened in Baltimore, and just recently in Hawaii, we had a situation in our schools where bullying led to fights, and the school had to be closed.

So I think that one of the ways that we prevent escalation of violent behavior is to put in place programs that will address the issue of bullying, which takes place in just about every State. Do you have any thoughts on that?

Chief JOHNSON. Yes. The President's plan calls for not only funding and an announcement for additional police officers—and I believe Congress should support these plans—they also call for funding to support additional counselors and psychological service providers as well in the schools.

Certainly, in my particular case and in many jurisdictions across America, we have police officers in all the high schools and, frankly, the middle schools, costing my jurisdiction nearly \$8 million a year. And they have a place, but certainly we believe that more needs to be done in this area. In my two school shootings, in both shootings, bullying was alleged to be a factor.

Senator HIRONO. Thank you.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you very much.

I want to thank all the witnesses who came here. This was a lengthy hearing. It is the first of others we will have. I think what we are trying to do—and I hope people realize—on this committee is trying to write laws that protect the public. Now, I cherish and exercise my Second Amendment rights as I do all my rights under the Constitution. But I do not think individual rights include weapons of war like land mines or tanks or machine guns or rocket-propelled grenades. And where do we go as we step back from those levels? I came here to have a discussion, hoping to build consensus. Obviously, there is more work that needs to be done.

I think there is one consensus. We all want to do what we can to prevent future tragedies and put an end to the violence that breaks all our hearts. You know, I live an hour's drive from another country—Canada. I do not see the same kind of problem there. I want to find out how we can stop what is happening. I believe there should be some areas of agreement, and I hope the Committee can get together to mark up legislation next month—this month is virtually over—and then take it to the floor.

We will respect the diversity of viewpoints represented today. We will have hearings that have other viewpoints. We have to listen to one another. But if we start with a basic thing that we abhor, the kind of violence we see and the violence I saw years ago as a prosecutor, let us find which steps work and go forward.

So thank you all, all five of you, very, very much.

We stand in recess.

[Whereupon, at 1:55 p.m., the Committee was adjourned.]

[Additional material submitted for the record follows.]

A P P E N D I X

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

UPDATED Witness List

Hearing before the
Senate Committee on the Judiciary

On

“What Should America Do About Gun Violence?”

Wednesday, January 30, 2013
Hart Senate Office Building, Room 216
10:00 a.m.

Captain Mark Kelly, USN (Ret.)
Americans for Responsible Solutions
Tucson, AZ

Professor David Kopel
Adjunct Professor of Advanced Constitutional Law
Denver University, Sturm College of Law
Denver, CO

James Johnson
Chief of Police
Baltimore County Police Department
Chair, National Law Enforcement Partnership to Prevent Gun Violence
Towson, MD

Gayle Trotter
Attorney and Senior Fellow
Independent Women’s Forum
Washington, DC

Wayne LaPierre
Executive Vice President and Chief Executive Officer
National Rifle Association
Fairfax, VA

PREPARED STATEMENT OF CAPT. MARK E. KELLY

Testimony of CAPT Mark E Kelly USN (Ret.)
Senate Committee on the Judiciary
January 30, 2013

Thank you Chairman Leahy and Ranking Member Grassley for inviting me here today. I look forward to a constructive dialogue with your committee. I also want to take the opportunity to congratulate Gabby's friend and much respected former colleague, Jeff Flake, on his new role as Arizona's junior Senator.

As you know, our family has been immeasurably affected by gun violence. Gabby's gift for speech is a distant memory. She struggles to walk, and she is partially blind. Her right arm is completely paralyzed. And a year ago she left a job she loved serving the people of Arizona.

But in the past two years, we have watched Gabby's determination, spirit, and intellect conquer her disabilities.

We aren't here as victims. We're speaking to you today as Americans.

We're a lot like many of our fellow citizens following this debate about gun violence:

- We're moderates. Gabby was a republican long before she was a democrat.
- We're both gun owners, and we take that right and the responsibilities that come with it very seriously.
- And we watch with horror when the news breaks to yet another tragic shooting. After 20 kids and six of their teachers were gunned down in their classrooms at Sandy Hook, we said, this time must be different. Something needs to be done.

We are simply two reasonable Americans who realize we have a problem with gun violence, and we need Congress to act.

At 10:10am on January 8, 2011, a young man walked up to Gabby at her constituent event at a Safeway in Tucson, leveled his gun, and shot her through the head. He then turned down the line and continued firing. In 15 seconds, he emptied his magazine. It contained 33 bullets; there were 33 wounds.

As the shooter attempted to reload, he fumbled. A woman grabbed the next magazine, and others tackled and restrained him.

Gabby was the first victim. Christina-Taylor Green, nine years old, born on 9/11 2001, was shot with the thirteenth bullet or after. And others followed.

The killer in the Tucson shooting suffered from severe mental illness. He is a paranoid schizophrenic who had been deemed unqualified for service in the United States Army and exhibited increasingly bizarre behavior as he spiraled toward murder. At Pima Community College, his disruptions led to run-ins with the campus police and his expulsion, but he was never reported to mental health authorities.

On November 30, 2010, he walked into a sporting goods store, passed a federal NICS background check, and walked out with a Glock 19 semiautomatic handgun. He had never been legally adjudicated as mentally ill, and, even if he had, Arizona at the time had over 121,000 records of disqualifying mental illness it had not submitted to the background check system.

Looking back, we can't say with certainty, "Only if we had done this, it wouldn't have happened." There isn't a single action or law that could have elegantly prevented the Tucson shooting from being written into the history books.

Gabby is one of roughly 100,000 victims of gun violence in America every year. Behind every victim lays a matrix of failure and inadequacy – in our families, communities, and values; in our society's approach to poverty, violence, and mental illness; and, yes, in our politics and in our gun laws.

One of our messages is simple: The breadth and complexity of the problem of gun violence great, but it is not an excuse for inaction.

As you know, there's another side to our story.

Gabby is a gun owner. I am a gun owner.

We have our firearms for the same reasons millions of Americans just like us have guns – to defend ourselves, our family, and our property, and to go hunting or target shooting.

We believe wholly and completely in the Second Amendment of our Constitution – and that it confers upon all Americans the right to own a firearm for protection, collection, and recreation.

We take that right very seriously, and we would never, ever give it up – just like Gabby would never relinquish her gun, and I would never relinquish mine.

But rights demand responsibility. And this right does not extend to terrorists. It does not extend to criminals. It does not extend to the mentally ill.

When dangerous people get guns, we are all vulnerable – at the local movie theater, worshipping at church, conducting our everyday business, exercising our civic responsibilities as Americans, and – time after time after time – at school, on our campuses, in our children’s classrooms.

When dangerous people get dangerous guns, we are all the more vulnerable. Dangerous people with weapons specifically designed to inflict maximum lethality upon others have turned every corner of our society into places of carnage and gross human loss.

Our rights are paramount. But our responsibilities are serious. And as a nation we are not taking responsibility for the gun rights our founders conferred upon us.

Gabby and I are pro-gun ownership. We are anti-gun violence.

And we believe that in this debate Congress should look not toward special interests and ideology, which push us apart, but toward compromise, which brings us together. We believe whether you call yourself pro-gun or anti-gun violence, or both – that you can work together to pass laws that save lives.

We have some ideas for you.

Fix background checks. Currently up to 40 percent of all gun transfers are made through private sales and without background checks. Not surprisingly, 80 percent of criminals reported obtaining their weapons through private sales with no background check. This makes a mockery of our background check system. Congress should close the private sales loophole and strengthen the background check system by requiring states and the federal government to supply the necessary records.

Remove the limitations on the CDC and other public health organizations on collecting data and conducting scientific research on gun violence. As a fighter pilot and astronaut, I saw the value of using data to achieve our military and scientific objectives. We wouldn’t have gotten to the Moon or built the International Space Station without robust use of data to make informed decisions. It is simply crazy that we limit gun violence data collection and analysis when we could use that knowledge to save lives.

Enact a federal gun trafficking statute with real penalties for people in the business of helping criminals get guns. Let’s get law enforcement the tools they need to stop violent criminals from killing people with illegal guns.

And, finally, let's have a careful and civil conversation about the lethality of the firearms we permit to be legally bought and sold. You can't just walk into a store and buy a machine gun, but you can easily buy a semi-automatic high velocity assault rifle and/or high capacity ammunition magazines. We should come together and decide where to draw that line in such a way that it protects our rights and communities alike.

This country and this Congress can find a commonsense consensus on preventing gun violence and protecting our inviolable Second Amendment rights. We went to the Moon and back within a decade of deciding we were going to do it. We have prevailed over adversaries big and small. Surely when the safety of our communities, our schools, and our children is at stake, our politics can provide a path toward compromise, and not an obstacle that can't be overcome.

Thank you.

PREPARED STATEMENT OF PROF. DAVID B. KOPEL

United States Senate Judiciary Committee

Full Committee Hearing

“What Should America Do About Gun Violence?”

January 30, 2013

10:00 AM

Hart Senate Office Building, Room 216

Written Testimony of David B. Kopel

Research Director, Independence Institute, Golden, Colorado.

Associate Policy Analyst, Cato Institute, Washington, D.C.¹

Adjunct Professor of Advanced Constitutional Law, Denver University,
Sturm College of Law. www.davekopel.org.

“[W]e cannot clearly credit the [1994 ‘assault weapons’] ban with any of the nation’s recent drop in gun violence.”—U.S. Department of Justice 2004 study.²

“Passing a law like the assault weapons ban is a purely symbolic move in that direction [to disarm the citizenry]. . . . [T]hat change in mentality starts with the symbolic yielding of certain types of weapons. The real steps, like the banning of handguns, will never occur unless this one is taken first. . . .”—Charles Krauthammer³

“The [‘assault’] weapons’ menacing looks, coupled with the public’s confusion over fully automatic machine guns versus semi-automatic assault weapons—anything that looks like a machine gun is assumed to be a machine gun—can only increase the chance of public support for restrictions on these weapons.”—Josh Sugarmann, Founder, Violence Policy Center⁴

The Political Attack on Firearms Ownership

On December 14, 2012, a deranged and hate-filled mass-murderer first killed his own mother and then snuffed out 26 additional lives at Sandy Hook Elementary School in Newtown, Connecticut. It was one of the worst mass murders at school since 1927, when a defeated school board candidate set off explosives at an elementary school in Bath Township, Michigan, killing 38 children and five adults. The horrific crime at Sandy Hook tore the heart out of the nation. It filled every life-loving American—every parent, grandparent, aunt, and uncle—with anger, dread, and anguish.

In the aftermath of this crime, many Americans are exploring ways to responsibly and realistically reduce the possibility of another such attack, such as by better-addressing mental illness,⁵ training people how to more-effectively respond to “active shooters,”⁶ and allowing teachers and other responsible adults to carry concealed handguns in schools—something already successfully implemented in Utah and parts of Texas, Ohio, and Colorado.⁷

Unfortunately, others are promoting repressive laws which would have done nothing to prevent Sandy Hook, and would do nothing to prevent the inevitable copycat crimes that may take place in the near future. The demands for symbolic but useless anti-gun laws are accompanied by an aggressive culture war against dissenters. A *Des Moines Register* journalist declared that well-known defenders of gun rights should be dragged behind pickup trucks, that the Second Amendment should be repealed, that the National Rifle Association (NRA) should be declared a “terrorist organization,” and that membership in the NRA should be outlawed.⁸ A writer for the *Huffington Post* declared that anyone who believes guns may

legitimately be owned for self-defense—or that the Second Amendment protects that right—is a “menace” and “a danger to your children.”⁹

Unfortunately, such mean-spirited and unjust demonization and scapegoating of law-abiding American gun owners has become a central feature of the political campaign to ban or restrict semi-automatic guns and the magazines that go with them. Even worse, the Newtown murders are being politically exploited

Prohibitionists use the false and inflammatory labels of “assault weapon” and “high-capacity magazine” to mischaracterize ordinary firearms and their standard accessories.

The AR-15 rifle has for years been the most popular, best-selling firearm in the United States. Millions of law-abiding Americans own AR-15s and similar guns. In an article for *Slate*, Justin Peters estimates that there may be nearly four million AR-15 rifles in the country—and that’s just one brand of rifle.¹⁰ Contrary to media claims, these ordinary citizens are not psychopaths intent on mass murder. Rather, Americans own so-called “assault weapons” for all the legitimate reasons that they own any type of firearm: lawful defense of self and others, hunting, and target practice. They do not own these firearms to “assault” anyone. To the contrary, rifles such as the AR-15, and standard capacity magazines of 11-19 rounds (for handguns) and up to 30 rounds (for rifles) are commonly used by rank and file police officers, because such firearms and magazines are often the best choice for the lawful protection of self and others.

That is why the police choose them so often. At Sen. Feinstein’s press conference introducing her new prohibition bill, Rev. Hale, of the National Cathedral, asserted that the guns and magazines are useful only for mass murder. This is a mean-spirited insult to the many police officers who have chosen these very same guns and magazines as the best tools for the most noble purpose of all: the defense of innocent life.

What Is An “Assault Weapon?”

Gun prohibition advocates have been pushing the “assault weapon” issue for a quarter century. Their political successes on the matter have always depended on public confusion. The guns are *not* machine guns. They do *not* fire automatically. They fire only one bullet each time the trigger is pressed, just like every other ordinary firearm. They are *not* more powerful than other firearms; to the contrary, their ammunition is typically intermediate in power, less powerful than guns and ammunition made for big game hunting.

The difference between automatic and semi-automatic

For an automatic firearm (commonly called a “machine gun”), if the shooter presses the trigger and holds it, the gun will fire continuously, automatically, until the ammunition runs out.¹¹ Ever since the National

Firearms Act of 1934, automatics have been very strictly regulated by federal law: Every person who wishes to possess one must pay a \$200 federal transfer tax, must be fingerprinted and photographed, and must complete a months-long registration process with the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE). In addition, the transferee must be granted written permission by local law enforcement, via ATF Form 4. Once registered, the gun may not be taken out of state without advance written permission from BATFE.

Since 1986, the manufacture of new automatics for sale to persons other than government agents has been forbidden by federal law.¹² As a result, automatics in U.S. are rare (there are about a hundred thousand legally registered ones), and expensive, with the least expensive ones costing nearly ten thousand dollars.

The automatic firearm was invented in 1883 by Hiram Maxim. The early Maxim Guns were heavy and bulky, and required a two-man crew to operate. In 1943, a new type of automatic was invented, the “assault rifle.” The assault rifle is light enough for a soldier to carry for long periods of time. Soon, the assault rifle became the ubiquitous infantry weapon. Examples include the U.S. Army M-16, the Soviet AK-47, and the Swiss militia SIG SG 550. The AK-47 (and its various updates, such as the AK-74 and AKM) can be found all over the Third World, but there are only a few hundred in the United States, mostly belonging to firearms museums and wealthy collectors.

The precise definition of “assault rifle” is supplied by the Defense Intelligence Agency.¹³ If you use the term “assault rifle,” persons who are knowledgeable about firearms will know precisely what kinds of guns you are talking about. The definition of “assault rifle” has never changed, because the definition describes a particular type of thing in the real world—just like the definitions of “apricot” or “Minnesota.”

In contrast, the definition of “assault weapon” has never been stable. The phrase is merely an epithet. It has been applied to things which are not even firearms (namely, air guns). It has been applied to double-barreled shotguns, to single-shot guns (guns whose ammunition capacity is only a single round), and to many other sorts of ordinary handguns, shotguns, and rifles.

The first “assault weapon” ban in the United States, in California in 1989, was created by legislative staffers thumbing through a picture book of guns, and deciding which guns looked bad. The result was an incoherent law which, among other things, outlawed certain firearms that do not exist, since the staffers just copied the typographical errors from the book, or associated a model by one manufacturer with another manufacturer whose name appeared on the same page.

Over the last quarter century, the definition has always kept shifting. One recent version is Sen. Dianne Feinstein’s new bill. Another is the pair of bills defeated in the January 2013 lame duck session of the Illinois legislature

which would have outlawed most handguns (and many long guns as well) by dubbing them “assault weapons.”

While the definitions of what to ban keep changing, a few things remain consistent: The definitions do *not* cover automatic firearms, such as assault rifles. The definitions do *not* ban guns based on how fast they fire, or how powerful they are. Instead, the definitions are based on the name of a gun, or on whether a firearm has certain superficial accessories (such as a bayonet lug, or a grip in the “wrong” place).

Most, but not all, of the guns which have been labeled “assault weapons” are semi-automatics. Many people think that a gun which is “semi-automatic” must be essentially the same as an automatic. This is incorrect.

Semi-automatic firearms were invented in the 1890s, and have been common in the United States ever since. Today, about three-quarters of new handguns are semi-automatics. A large share of rifles and shotguns are also semi-automatics. Among the most popular semi-automatic firearms in the United States today are the Colt 1911 pistol (named for the year it was invented, and still considered one of the best self-defense handguns), the Ruger 10/22 rifle (which fires the low-powered .22 Long Rifle cartridge, popular for small game hunting or for target shooting at distances less than a hundred yards), the Remington 1100 shotgun (very popular for bird hunting and home defense), and the AR-15 rifle (popular for hunting game no larger than deer, for target shooting, and for defense). All of these guns were invented in the mid-1960s or earlier. All of them have, at various times, been characterized as “assault weapons.”

Unlike an automatic firearm, a semi-automatic fires only one round of ammunition when the trigger is pressed. (A “round” is one unit of ammunition. For a rifle or handgun, a round has one bullet. For a shotgun, a single round contains several pellets).

In some other countries, a semi-automatic is usually called a “self-loading” gun. This accurately describes what makes the gun “semi”-automatic. When the gun is fired, the bullet (or shot pellets) travel from the firing chamber, down the barrel, and out the muzzle. Left behind in the firing chamber is the now empty case or shell that contained the bullets (or pellets) and the gunpowder.

In a semi-automatic, some of the energy from firing is used to eject the empty shell from the firing chamber, and then load a fresh round of ammunition into the firing chamber. Then, the gun is ready to shoot again, when the user is ready to press the trigger.

In some other types of firearms, the user must perform some action in order to eject the empty shell and load the next round. This could be moving a bolt back and forth (bolt action rifles), moving a lever down and then up (lever action rifles), or pulling and then pushing a pump or slide (pump action and slide action rifles and shotguns). A revolver (the second-most popular

type of handgun) does not require the user to take any additional action in order to fire the next round.¹⁴

The semi-automatic has two principle advantages over lever action, bolt action, slide action, and pump action guns. First, many hunters prefer it because the semi-automatic mechanism allows a faster second shot. The difference may be less than a second, but for a hunter, this can make all the difference.

Second, and more importantly, the semi-automatic's use of gunpowder energy to eject the empty case and then to load the next round substantially reduces how much recoil is felt by the shooter. This makes the gun much more comfortable to shoot, especially for beginners, or for persons without substantial upper body strength and bulk.

The reduced recoil also make the gun easier to keep on target for the next shot, which is important for hunting and target shooting, and extremely important for self-defense.

Semi-automatics also have their disadvantages. They are much more prone to misfeeds and jams than are simpler, older types of firearms, such as revolvers or lever action.

Contrary to the hype of anti-gun advocates and less-responsible journalists, there is no rate of fire difference between a so-called "assault" semi-automatic gun and any other semi-automatic gun.

How fast does a semi-automatic fire?

Here is a report on the test-firing of a new rifle:

187 shots were fired in three minutes and thirty seconds and one full fifteen shot magazine was fired in only 10.8 seconds.

Does that sound like a machine gun? A "semi-automatic assault weapon"? Actually it is an 1862 test report of the then-new lever-action Henry rifle, manufactured by Winchester. If you have ever seen a Henry rifle, it was probably in the hands of someone at a cowboy re-enactment, using historic firearms from 150 years ago.

The Winchester Henry is a lever-action, meaning that after each shot, the user must pull out a lever, and then push it back in, in order to eject the empty shell casing, and then load a new round into the firing chamber.

The lever-action Winchester is not an automatic. It is not a semi-automatic. It was invented decades before either of those types of firearms. And yet that old-fashioned Henry lever action rifle can fire one bullet per second.

By comparison, the murderer at Sandy Hook fired 150 shots over a 20 minute period, before the police arrived. In other words, a rate of fewer than 8 shots per minute. This is a rate of fire far slower than the capabilities of a lever-action Henry Rifle from 1862, or a semi-automatic AR-15 rifle from

2010. Indeed, his rate of fire could have been far exceeded by a competent person using very old technology, such as a break-open double-barreled shotgun.

Are semi-automatics more powerful than other guns?

The power of a firearm is measured by the kinetic energy it delivers. Kinetic energy is based on the mass (the weight) of the projectile, and its velocity.¹⁵ So a heavier bullet will deliver more kinetic energy than a lighter one. A faster bullet will deliver more kinetic energy than a slower bullet.¹⁶

How much kinetic energy a gun will deliver has nothing to do with whether it is a semi-automatic, a lever action, a bolt action, a revolver, or whatever. What matter is, first of all, the weight of the bullet, how much gunpowder is in the particular round of ammunition, and the length of the barrel.¹⁷

None of this has anything to do with whether the gun is or is not a semi-automatic. Manufacturers typically produce the same gun in several different calibers, sometimes in more than a dozen calibers.

Regarding the rifles which some people call “assault weapons,” they tend to be intermediate in power, as far as rifles go. Consider the AR-15 rifle in its most common caliber, the .223. The bullet is only a little bit wider than the puny .22 bullet, but it is longer, and thus heavier.

Using typical ammunition, an AR-15 in .223 would have 1,395 foot-pounds of kinetic energy.¹⁸ That’s more than a tiny rifle cartridge like the .17 Remington, which might carry 801 foot-pounds of kinetic energy. In contrast, a big-game cartridge, like the .444 Marlin, might have 3,040.¹⁹ This is why rifles like the AR-15 are suitable and often used for hunting small to medium animals (such as rabbits or deer), but are not suitable for the largest animals, such as elk or moose.²⁰

Many (but not all) of the ever-changing group of guns which are labeled “assault weapons” use detachable magazines (a box with an internal spring) to hold their ammunition. But this is a characteristic shared by many other firearms, including many non-semiautomatic rifles (particularly, bolt-actions), and by the large majority of handguns. Whatever the merits of restricting magazine size (and we will discuss this below), the size of the magazine depends on the size the magazine. If you want to control magazine size, there is no point in banning certain guns which can take detachable magazines, while not banning other guns which also take detachable magazines.

Bans by name

Rather than banning guns on rate of fire, or firepower, the various legislative attempts to define an “assault weapon” have taken two approaches: banning guns by name, and banning guns by whether they have certain superficial features.

After a quarter century of legislative attempts to define “assault weapon,” the flagship bill for prohibitionists, by Senator Dianne Feinstein, still relies on banning 157 guns by name. This in itself demonstrates that “assault weapons” prohibitions are not about guns which are actually more dangerous than other guns.

After all, if a named gun really has physical characteristics which make it more dangerous than other guns, then legislators ought to be able to describe those characteristics, and ban guns (regardless of name) which have the supposedly dangerous characteristics.

Banning guns by name violates the Constitution’s prohibition on Bills of Attainder. It is a form of legislative punishment, singling out certain politically disfavored companies for a prohibition on their products.

Bans by features

An alternative approach to defining “assault weapon” has been to prohibit guns which have one or more items from a list of external features. These features have nothing to do with a gun’s rate of fire, its ammunition capacity, or its firepower. Below are various items from Senator Feinstein’s 1994 and/or 2013 bills.

Bayonet lugs. A bayonet lug gives a gun a military appearance. But to say the least, it has nothing to do with any real-world issue. Drive-by bayonetings are not a problem in this country.

Attachments for rocket launchers and grenade launchers. Since nobody makes guns for the civilian market that have such features, these bans would affect nothing. Putting the words “grenade launcher” and “rocket launcher” into the bill gives readily-gulled media the opportunity to ask indignantly “How can anyone support guns made to shoot grenades!?!” Besides that, grenades and rockets are subject to extremely severe controls, and essentially impossible for civilians to acquire.

Folding or telescoping stocks. Telescoping stocks are extremely popular because they allow shooters to adjust the gun to their own size and build, to the clothing they’re wearing, or to their shooting position. Folding stocks make a rifle or shotgun much easier to carry in a backpack while hunting or camping. Even with a folding stock, the gun is still far larger, and less concealable, than a handgun.

Grips. The Feinstein bills outlaw any long gun that has a grip, or anything which can function as a grip. Of course, all guns have grips—or they couldn’t be held in the hand to fire at all. While this means that some bills would presumptively ban nearly all semi-autos, the likely intent is to ban pistol-style grips. This reflects the fact that gun prohibitionists learn much of what

they know about guns by watching movies made by other gun prohibitionists, such as the “Rambo” series by Sylvester Stallone. So they think that the purpose of a “pistol grip” is to enable somebody to “spray fire” a gun. And, of course, the prohibitionists imagine that semiautomatic rifles *are* exactly the same as the machine guns in the Rambo movies.

In truth, a grip helps a responsible shooter stabilize the rifle while holding the stock against his shoulder. It is particularly useful in hunting, where the shooter will not have sandbags or a benchrest, or perhaps anything else on which to rest the forward part of the rifle. Accurate hunting is humane hunting. And should a long gun be needed for self-defense, accuracy can save the victim’s life.

The gun prohibition lobbies, though, oppose firearms accuracy. On the January 16, 2013, PBS Newshour, Josh Horowitz (an employee of the Coalition to Stop Gun Violence) said that grips should be banned because they prevent “muzzle rise” and thereby allow the shooter to stay on target.

Well, yes, a grip helps stabilize the gun so that a second shot (whether at a deer or a violent attacker) will go where the first shot went. Horowitz was essentially saying that guns which are easy to fire accurately should be banned.

This is backwards. It is like claiming that history books which are especially accurate should be banned, while less-accurate books could still be allowed.

Guns which are more accurate are better for all the constitutionally-protected uses of firearms, including self-defense, hunting, and target shooting. To single them out for prohibition is flagrantly unconstitutional.

Barrel covers. For long guns that do not have a forward grip, the user may stabilize the by holding the barrel with her non-dominant hand. A barrel cover or shroud protects the user’s hand. When a gun is fired repeatedly, the barrel can get very hot. This is not an issue in deer hunting (where no more than a few shots will be fired in a day), but it is a problem in some other kinds of hunting, and it is a particular problem in target shooting, where dozens of shots will be fired in a single session.

Threaded barrel for safety attachments. Threading at the end of a gun barrel can be used to attach muzzle brakes or sound suppressors.

When a round is fired through a gun barrel, the recoil from the shot will move the barrel off target, especially for a second, follow-up shot. Muzzle brakes reduce recoil and keep the gun on target. It is very difficult to see how something which makes a gun more accurate makes it so “bad” that it must be banned.

A threaded barrel can also be used to attach as sound suppressor. Suppressors are legal in the United States; buying one requires the same very severe process as buying a machine gun. They are sometimes,

inaccurately, called “silencers.” They typically reduce a gunshot’s noise by about 15-20 decibels, which still leaves the gun four times louder than a chainsaw.

But people who only know about firearms by watching movies imagine that a gun with a “silencer” is nearly silent, and is only used by professional assassins. In real life, sound suppressors are used by lots of people who want to protect their hearing, or to reduce the noise heard by neighbors of a shooting range. Many firearms instructors choose suppressors in order to help new shooters avoid the “flinch” that many novices display because of a gun’s loudness.

The bans on guns with grips, folding stocks, barrel covers, or threads focus exclusively on the relatively minor ways in which a feature might help a criminal, and completely ignore the feature’s utility for legitimate sports and self-defense. The reason that manufacturers include these features on firearms is because millions of law-abiding firearms owners choose them for entirely legitimate purposes.

Sen. Dianne Feinstein’s 2013 Legislation

Sen. Feinstein attempts to reassure gun owners by also including an appendix of guns which she is not banning. In 1994, she exempted 670 “recreational” firearms. In 2013, the exempted guns list grows to over 2,200. Notably, not a single handgun appears on either of Sen. Feinstein’s lists. The basis for a gun being exempted is because it is, supposedly, suitable for recreational uses. This ignores the holding of *District of Columbia v. Heller* that self-defense is the core of the Second Amendment.

The exemption list is meaningless. It is inflated by naming certain models repeatedly. For example, the Remington 870 pump action shotgun appears 16 different times, in its various configurations. Besides that, none of the exempted guns are covered by the bill’s ban on guns by name or by feature.

Regarding grandfathered guns, Sen. Feinstein makes them non-transferable, thus imposing a slow-motion form of uncompensated confiscation.

Grandfathering with slow-motion confiscation may be a way-station to immediate confiscation, when political circumstances allow. As Sen. Feinstein told CBS 60 Minutes in 1995, “If it were up to me, I would tell Mr. and Mrs. America to turn them in—turn them all in.”²¹

Would a ban do any good?

Connecticut banned so-called “assault weapons” in 1993, and the ban is still on the books. The Bushmaster rifle used by the Sandy Hook murderer was not an “assault weapon” under Connecticut law. Nor was it an “assault weapon” under the 1994-2004 Feinstein ban.²² The new Feinstein ban would cover that particular model of Bushmaster. But it would allow Bushmaster (or any other company) to manufacture other semi-automatic rifles, using a

different name, which fire just as fast, and which fire equally powerful bullets.

To reiterate, the Sandy Hook murderer's rate of fire (150 shots in 20 minutes) could be duplicated by any firearm produced in the last century and a half.

We do not have to speculate about whether "assault weapon" bans do any good. A Department of Justice study commissioned by the Clinton administration found that they do not.

In order to pass the 1994 federal ban, proponents had to accept two related provisions. First, the ban would sunset after 10 years. Second, the Department of Justice would have to commission a study of the ban's effectiveness. The study would then provide Congress with information to help decide whether to renew the ban.

The Justice Department of Attorney General Janet Reno chose the Urban Institute to conduct the required study. The Urban Institute is well-respected and long-established progressive think tank in Washington. The study found the Feinstein ban to be a complete failure. There was no evidence that lives were saved, no evidence that criminals fired fewer shots during gun fights, no evidence of any good accomplished. Given the evidence from the researchers selected by the Clinton-Reno Department of Justice, it was not surprising that Congress chose not to renew the 1994 ban.

The final report was published by the U.S. Department of Justice's research arm, the National Institute of Justice, in 2004, based on data through 2003. The authors were Christopher S. Koper, Daniel J. Woods, and Jeffrey A. Roth.²³ The 2004 final report replaced two preliminary papers by Roth and Koper, one of which was published in 1997, and the other in 1999.²⁴

The 2004 final report concludes: "we cannot clearly credit the ban with any of the nation's recent drop in gun violence. . . . Should it be renewed, the ban's effects on gun violence are likely to be small at best and perhaps too small for reliable measurement."

As the paper noted, "assault weapons" "were used in only a small fraction of gun crimes prior to the ban: about 2% according to most studies and no more than 8%." Most of those that were used in crime were pistols, not rifles.

Recall that "assault weapons" are arbitrarily categorized guns that are functionally equivalent to other guns. Thus, criminals, to the degree that the ban affects them at all, can and did easily substitute other guns for so-called "assault weapons."

Regarding the ban's impacts on crime, the 2004 paper concludes that "the share of crimes involving" so-called "assault weapons" declined, due "primarily to a reduction in the use of assault pistols," but that this decline "was offset throughout at least the late 1990s by steady or rising use of other guns equipped with" magazines holding more than ten rounds. In other words, as anyone with common sense could have predicted, criminals easily

substituted some guns for others. (Magazines are discussed in the next section.)

Unfortunately, Senator Feinstein's website is somewhat inaccurate in claiming that the 1994 ban was helpful. The Senator's web page on "assault weapons" lists five sources that allegedly show the "effectiveness" of the 1994 ban. However, four of those sources pertain, not to changes in crime rates, but to changes in weapon and magazine use. Such trends do not show that the 1994 ban was effective. Instead, they show, among other things, that the ban took place in a period of declining crime rates. Crime was declining before the imposition of the ban, and it continued to decline after the ban was lifted. The shift in gun use in crime also shows that criminals can easily replace "assault" semi-automatic guns with other, functionally equivalent semi-automatic guns.²⁵

The four cited sources show that if you make it illegal to manufacture a gun with a certain name, then firearms companies will make guns with different names. Then, guns with the "bad" names will become a smaller fraction of the total U.S. gun supply. Some of the guns in the legal pool of guns are eventually acquired by criminals. (The principal means are thefts, and "straw purchases," in which a confederate who does not have a criminal record purchases a firearm on behalf of a convicted criminal. Straw purchases are federal felonies.) So over time, criminals have fewer guns with the "bad" name, and more guns with other names. Changing the names of the guns that criminals use does not make anyone any safer.

For the fifth source, the website makes the following claim:

In a Department of Justice study, Jeffrey Roth and Christopher Koper find that the 1994 Assault Weapons Ban was responsible for a 6.7 percent decrease in total gun murders, holding all other factors equal. . . .

Original source (page 2): Jeffrey A. Roth & Christopher S. Koper, "Impact Evaluation of the Public Safety and Recreational Firearms Use Protection Act of 1994," The Urban Institute (March 1997).

Attentive readers will notice that Roth and Koper are two of the authors of the 2004 study discussed above. So why does the website cite the 1997 study by these researchers, but not their 1999 study or (regarding this point) their 2004 study? The later studies repudiated the preliminary guess in the 1997 study.

Here is what the 1997 study actually said:

Our best estimate is that the ban contributed to a 6.7 percent decrease in total gun murders between 1994 and 1995, beyond what would have been expected in view of ongoing crime, demographic, and economic trends. However, with only one year of post-ban data, we cannot rule out

the possibility that this decrease reflects chance year-to-year variation rather than a true effect of the ban.²⁶

So initially, the researchers mistook a “year-to-year variation”—actually part of a long-term decline in crime rates—for the effects of the “assault weapons ban.” They corrected this error in their subsequent reports—a fact that Senator Feinstein’s website does not acknowledge.

What about state-level “assault weapons bans?” Remember that Connecticut has had such a ban since 1993. The Newtown murders are a vivid illustration that such bans do not save lives.

Economist John Lott examined data for the five states with “assault weapon” bans in his 2003 book, *The Bias Against Guns*. Controlling for sociological variables, and testing the five states with bans against the other 45 states, he found no evidence of a reduction in crime. To the contrary, the bans were associated with increased crime in some categories.²⁷ Whether the adverse effect Lott reports is a phantom of statistical analyses or random factors, or whether it is the result of criminals feeling relatively empowered due to state governments cracking down on law-abiding gun owners, the state-level data do not support the claim that “assault weapons” bans reduced crime rates.

It is ridiculous to claim that banning some semi-automatic guns, while leaving other, functionally equivalent semi-automatic guns legal, will reduce violent crime. It is analogous to banning knives with black handles, but not knives with brown handles, and expecting that to reduce knife-related crime.

Regarding mass murders in particular, *Mother Jones* examined 62 mass shootings since 1982, finding that 35 of the total 142 guns used were designated as “assault weapons.”²⁸ To take one example not involving an “assault weapon,” in 1991 a man murdered 22 people at a Texas cafeteria using a pair of ordinary semi-automatic pistols, not an “assault weapon.” He reloaded the gun multiple times.²⁹ Tragically, in order to comply with laws against concealed carry, Suzanna Hupp had locked her own handgun in her vehicle before entering the cafeteria, rendering her defenseless as the attacker murdered her parents and many others.³⁰

Obviously criminals need not limit themselves to semi-automatic guns. Consider first the potential lethality of shotguns. The Winchester Model 12 pump action shotgun (defined as a “recreational” firearm by the 1994 federal “assault weapons” ban) can fire six 00 buckshot shells, each shell containing twelve .33 caliber pellets, in three seconds. Each of the pellets is larger in diameter than the bullet fired by an AKS (a semiautomatic look-alike of an AK-47 rifle). In other words, the Winchester Model 12 pump action shotgun can in three seconds unleash seventy-two separate projectiles, each single one capable of causing injury or death. The Remington Model 1100 shotgun (a common semiautomatic duck-hunting gun, also defined as a “recreational” firearm under the 1994 ban) can unleash the same seventy-two projectiles in

2.5 seconds. In contrast, an AKS would take about a minute to fire forty aimed shots (or perhaps twice that many without aiming).³¹ Notably, a pump-action shotgun is extremely easy to reload without lowering the gun from firing position, and each additionally loaded shell can be fired immediately. When mass murderers target victims in tightly-packed venues, a “recreational” shotgun could be particularly deadly.

The purpose of gun bans is to ban guns

The only true utility of a ban on “assault weapons” is to condition the public to bans on more guns. For example, Douglas Anthony Cooper advocates a ban on “assault” semi-automatics and “high-capacity” magazines, though he grants such legislation makes little or no difference. His solution is to ban all semi-automatic rifles and all pump-action shotguns, writing that pump-action shotguns “are in some ways *more* useful than many often-banned weapons, if you intend to shoot a huge number of people, quickly.”³²

In the 1996 op-ed quoted above, Charles Krauthammer calls for government to “disarm its citizenry,” and he sees the “assault weapons ban” as meaningful only as a step in that direction. Krauthammer argues, “The claim of the advocates that banning these 19 types of ‘assault weapons’ will reduce the crime rate is laughable. There are dozens of other weapons, the functional equivalent of these ‘assault weapons,’ that were left off the list and are perfect substitutes for anyone bent on mayhem.” Nevertheless, Krauthammer sees the ban as useful insofar as it leads to “real steps, like the banning of handguns,” down the road.³³

Although writer Christian Chung does not offer a detailed plan on the legislation he would eventually like to see in place, he refers to Feinstein’s newly proposed “assault weapons ban” as “only the start” of much more extensive legislation. One of Chung’s complaints is that the “assault weapons ban” arbitrarily outlaws some semi-automatic guns because of some “cosmetic addition” while leaving functionally equivalent guns legal.³⁴

Writing for the *Atlantic*, senior editor Robert Wright similarly complains about the “assault weapons ban,” arguing that “the assault weapons issue is a red herring.” As he points out, “there’s no clear and simple definition of an assault weapon, and this fact has in the past led to incoherent regulation.” What is Wright’s preferred legislation? He advocates legislation to accomplish the following: “It’s illegal to sell or possess a firearm—rifle or pistol—that can hold more than six bullets. And it’s illegal to sell or possess a firearm with a detachable magazine.”³⁵ In other words, Wright wants to outlaw the overwhelming majority of semi-automatic guns.

Magazines

Nationally, anti-gun advocates are calling for a ban on magazines holding more than 10 rounds. New York Governor Andrew Cuomo has gone even further, with a ban on anything holding more than seven.³⁶ These bans are unconstitutional, and harmful to public safety.

A magazine is the part of the firearm where ammunition is stored. Sometimes the magazine is part of the firearm itself, as in tube magazines underneath barrels. This is typical for shotguns.

For rifles and handguns, the typical magazine is detachable. A detachable magazine is a rectangular or curved box, made of metal or plastic. At the bottom of the magazine is a spring, which helps push a fresh round of ammunition into the firing chamber, after the empty shell from the previous round has been ejected. Some people use the word “clip,” but this is incorrect.

The type or model of gun does not determine what size magazine can be used. Any gun that uses a detachable magazine can accommodate a detachable magazine of any size.

As detailed above, the 1994 Feinstein ban was predicated on the theory that “recreational” firearm use is legitimate, and other firearms use is not. The ban did in fact impede recreational firearms use. More importantly, the ban is plain a violation of *Heller*, which affirms the right of defensive gun ownership.

For target shooting competitions, there are many events which *require* the use of magazines holding more than 10 rounds. For hunting, about half the states limit the magazine size that a hunter can carry in the field, but about half the states do not.

In some scenarios, such as deer hunting, it is quite true that a hunter will rarely get off more than two shots at a particular animal. But in other situations, particularly pest control, the use of 11 to 30 round magazines is quite typical, because the hunter will be firing multiple shots. These include the hunting of packs of feral wild hogs (which are quite strong, and are often difficult to put down with a single shot); prairie dogs, and coyotes.

More generally, the rifle that might shoot only one or two shots at a deer might be needed for self-defense against a bear, or against human attackers. In 2012, Arizona repealed its limitations on magazine capacity for hunters precisely because of the need for self-defense against unexpected encounters with smuggling gangs in the southern part of the state. It is well-established that drug traffickers and human traffickers often use the same wild and lonely lands that hunters do.

For the firearms that are most often chosen for self-defense, asserting that any magazine over 10 (or seven) rounds is “high capacity” is incorrect. The term “high-capacity magazine” might have a legitimate meaning when it refers to a magazine that extends far beyond that intended for the gun’s optimal operation. For example, although a semi-automatic handgun can

accept a 30-round magazine, such a magazine extends far beneath the gun grip, and it is therefore impractical to use with a concealed-carry permit, to take one example. For a handgun, a 30-round magazine may be a “high-capacity magazine.”

The persons who have the most need for actual high-capacity magazines are persons who would have great difficulty changing a magazine—such as elderly persons, persons with handicaps, persons with Parkinson’s disease, and so on. For a healthy person, changing a magazine takes only a second or two. How is this accomplished? Typically a gun’s magazine-release button is near the trigger. To change a magazine, the person holding the gun presses the magazine-release button with a thumb or finger. The magazine instantly drops to the floor. While pushing the magazine-release button with one hand, the other hand grabs a fresh magazine (which might be carried in a special holster on a belt) and bringing it towards the gun. The moment the old magazine drops out, a fresh one is inserted.³⁷

Although changing magazines is quick, persons being attacked by violent criminals will typically prefer not to spend even two seconds in a magazine change. This is why semi-automatic handguns often come factory-standard with a magazine of 11 to 19 rounds. For example, Rep. Gabrielle Giffords has said that she owns a 9mm Glock handgun. The most popular Glocks in this caliber come standard with 15 or 17 round magazines.³⁸

For most other manufacturers as well, handgun magazines with a capacity of 11 to 19 rounds are factory standard. A ban on magazines with a capacity of more than 10 rounds means a ban on the most common and most useful magazines purchased for purposes of recreational target practice and self-defense.

One thing that proves the obvious usefulness of standard capacity magazines is the fact that most police officers use them. An officer typically carries a semi-automatic handgun on a belt holster as his primary sidearm. The magazine capacity is typically in the 11-19 range.

Likewise, the long gun that is carried in police patrol cars is quite often an AR-15 rifle with a 30-round magazine.³⁹

True, a police officer is much more likely than other civilians to find him- or herself in a confrontation with violent criminals. Nevertheless, every civilian faces some risk of such a confrontation, and every law-abiding citizen has a moral right to own the best tools of self-defense should such a confrontation come to pass. Although different guns work better for different individuals in different circumstances, in many contexts the officer’s advice is equally sound for non-police civilians who own a gun for self-defense.

Why might someone “need” a factory-standard fifteen-round magazine for a common 9 mm handgun? Beyond the fact that government should recognize and protect people’s rights, not dictate to free Americans what they “need” to own, standard-capacity magazines can be extremely useful for self-defense. This is true in a variety of circumstances, such as if a defender faces multiple

attackers, an attacker is wearing heavy clothing or body armor, an attacker is turbo-charged by methamphetamine or cocaine, an attacker poses an active threat from behind cover, or a home invader cuts the lights to the home before entering at night. Especially because, in stressful circumstances, police as well as non-police civilians often miss when firing a handgun even at close range, having the extra rounds can be crucially important in some defensive contexts.

Consider the advantages a criminal has over his intended victims. The criminal often takes time to carefully prepare an attack; the victim is caught off-guard. The criminal has the element of surprise; the victim is the one surprised. The criminal can adapt his plans, as by selecting different weaponry; the victim must respond with what's at hand at the moment of attack. A criminal can, for instance, substitute a shotgun or a bag full of revolvers for a semi-automatic gun. A criminal can pack multiple magazines if he uses a semi-automatic gun. The intended victim, on the other hand, usually will have on hand at most a single defensive gun, carrying (if it is a semi-automatic) a single magazine. Thus, what legislation such as a ban on "high-capacity" magazines does is give the criminal a greater advantage over his intended victims.

Would a magazine ban do any good?

Recall that in 2004 the National Institute of Justice study found that the 1994-2004 ban on the manufacture or import of such magazines had no discernible benefit. As the authors noted, the existing supply of such magazines was so vast that criminals apparently had no trouble obtaining magazines of whatever size they wished.⁴⁰

Since the September 2004 expiration of the ban on new magazines, the supply has grown vaster still. In other words, we know that the pre-1994 supply of magazines was so large that nine years of prohibition had no effect. The much larger supply of magazines as of 2013 means that the already-demonstrated period of nine years of futility would be far longer.

No one can say if a ban on new magazines would ever do any good. But we can be rather certain that a ban would be ineffectual for at least fifteen years, and perhaps many more. Preventing the next Newtown is something that requires solutions which will start working this year—and not futile laws which, in the best case scenario, might possibly begin to have their first benefits around 2030.

It is entirely possible to speculate what might happen if criminals did not have magazines with 11 or more rounds, just as one can speculate about what might happen if all criminals could not obtain stolen cars, or if criminals could not obtain guns, or if all criminals were left-handed. But there is no particular reason to think that any of these scenarios might ever come true.⁴¹

A national ban on the millions of currently owned "high capacity" magazines would require a heavy-handed police state to enforce. The new

Cuomo ban in New York will be enforceable only if the state's motto of "The Empire State" is changed to "The Police State."

It would be possible to outlaw the legal transfer of grandfathered magazines, but this would not remove "high-capacity" magazines from the black market.

Regarding "shootout" scenarios, the types of criminals most likely to get into shootouts with the police or with other criminals are precisely the types of criminals expert at acting on the black market. Although gun prohibitionists often link "assault weapons" to gang violence associated with the illegal drug trade,⁴² they miss the irony of their argument. They are, in effect, claiming that gangs operating the black market in drugs will somehow be restricted from acquiring "high capacity" magazines by legislation limiting the manufacture and sale of such magazines. In short, their argument—at least as it pertains to career criminals—is ludicrous. If gangsters can obtain all the cocaine they want, despite a century of severely-enforced prohibition, they are going to be able to get 15 round magazines.

Besides that, magazines are not very difficult to build. Anyone with moderate machine shop skills can build a small metal box and put a spring in it. Building magazines is vastly easier than building guns, and we know that tribespeople in Ghana (who do not have access to high-quality machine shops) produce a hundred thousand working copies of the AK-47 per year.⁴³

Moreover, 3-D printing technology has *already* produced "printed" plastic magazines.⁴⁴ It's not very hard—just a box in a particular shape, along with a spring. For manufacturing actual firearms, 3-D printing is currently just a hypothetical; a firearm needs to be strong enough to withstand (over the course of its use) many thousands of gunpowder explosions in the firing chamber. But for a mere magazine, the current strength of printed plastics is sufficient.

We can limit the discussion, then, to mass murders in which the perpetrator targets victims randomly, often seeking the global infamy the mass media so readily provide them. Of course some such people could still illegally purchase a "high capacity magazine" on the black market. Given that 36 percent of American high school seniors illegally acquire and consume marijuana,⁴⁵ it is unrealistic to think that someone intent on mass mayhem would be unable to find his magazine of choice on the black market.

Besides that, the truly high-capacity magazines (e.g., a 100 round drum), are very prone to malfunction. For example, during the mass murder at the movie theater in Aurora, the murderer's 100-round magazine malfunctioned, causing the killer to cease using the gun with the magazine.⁴⁶ Had the killer had numerous, smaller magazines, he would have been able to fire more rounds from that particular gun. Hundred round magazines are novelty items, and are not standard for self-defense by civilians or police.

Advocates of the ban on standard capacity magazines assert that while the attacker is changing the magazine, one of the victims can tackle him.

There are three known instances where something this may have happened: in Springfield, Oregon, in 1998; in Tucson, Arizona, in 2011;⁴⁷ and the Long Island Railroad in 1991.

Far more commonly, however, the victims are fleeing, and are not close enough to the shooter to tackle him during a two-second interval. At Newtown, the murderer changed magazines many times, firing only a portion of the rounds in each magazine.⁴⁸ At the 1991 murders at the Luby's Texas cafeteria (24 dead), the perpetrator changed magazines multiple times. In the Virginia Tech murders, the perpetrator changed magazines 17 times.⁴⁹

The *Heller* decision teaches us that one does not decide on the constitutionality of banning something simply by looking at instances of misuse. Handguns are used in thousands of homicides annually, and in several hundred thousand other gun crimes. A ban on handguns (imagining it would be effective) would have orders of magnitude greater benefits than a ban on magazines holding more than 10 rounds (imagining that too to be effective).

Heller, however, reminds us that the Second Amendment has already done the cost-benefit analysis. The Framers were quite familiar with gun crime, and with lawful defensive gun use. The arms and accessories protected by the Second Amendment are those which are commonly used by law-abiding citizens for legitimate purposes, especially self-defense. In today's America, this certainly includes handguns and rifles with magazines that prohibitionists would consider "large."

International Comparisons

Some Americans, including Howard Dean, the former chair of the Democratic National Committee, have advocated the mass confiscation of firearms. Their model is the confiscations that took place in the past quarter-century in Great Britain.

This dystopian situation in Great Britain actually shows the perils of repressive anti-gun laws:

- A woman in Great Britain is three times more likely to be raped than an American woman.
- In the United States, only about 13% of home burglaries take place when the occupants are home, but in Great Britain, about 59% do. American burglars report that they avoid occupied homes because of the risk of getting shot. English burglars prefer occupied homes, because there will be wallets and purses with cash, which does not have to be fenced at a discount. British criminals have little risk of confronting a victim who possesses a firearm. Even the small percentage of British homes which have a lawfully-owned gun would

not be able to unlock the gun from one safe, and then unlock the ammunition from another safe, in time to use the gun against a home invader. It should hardly be surprising, then, that Britain has a much higher rate of home invasion burglaries than does the United States.⁵⁰

- Overall, the violent crime rate in England and Wales is far above the American rate. (Using the standard definition for the four most common major violent crimes: homicide, rape, robbery, and aggravated assault.)
- According to the United Nations (not exactly a “pro-gun” organization), Scotland is the most violent nation in the developed world.⁵¹

In the early 20th century, the Great Britain had virtually no gun control, virtually no gun control. Today, it has a plethora of both.

What went wrong? Various minor and ineffectual gun controls were enacted in the late nineteenth and early twentieth centuries; proposals for more extensive controls ran into strenuous opposition in Parliament from MPs who still believed in natural rights. The advocacy for gun control was almost always accompanied by a bodyguard of lies, such as when the government, fearful of a workers rebellion, pushed through the Firearms Act of 1920. The government falsely told the public that gun crimes were rapidly increasing, and hid the law’s true motive (political control) from the public, presenting the law as a mere anti-crime measure.⁵² In practice, the law eliminated the right of British subjects to be armed, and turned it into a privilege. The Firearms Act also began a decades-long process of eliminating the public’s duty to protect their society and right to protect themselves. By the late 20th century, Great Britain had one of the lowest rates of gun ownership in the Western World. Only 4% of British households would admit gun ownership to a telephone pollster.⁵³

In 1998, after a known pedophile used a handgun to murder kindergarten children in Dunblane, Scotland, the Parliament banned non-government possession of handguns. As a result the Gun Control Network (a prohibition advocacy group) enthused that “present British controls over firearms are regarded as ‘the gold standard’ in many countries.” According to GCN spokesperson Mrs. Gill Marshall-Andrews, “the fact that we have a gold standard is something to be proud of....”⁵⁴

A July 2001 study from King’s College London’s Centre for Defence Studies found that handgun-related crime increased by nearly 40% in the two years following implementation of the handgun ban. The study also found that there had been “no direct link” between lawful possession of guns by licensed citizens and misuse of guns by criminals. According to the King’s College report, although the 1998 handgun ban resulted in over 160,000 licensed handguns being withdrawn from personal possession, “the UK

appears not to have succeeded in creating the gun free society for which many have wished. Gun related violence continues to rise and the streets of Britain...seem no more safe.”⁵⁵

A few weeks before the King’s College study was released, Home Office figures showed that violent crime in Great Britain was rising at the second fastest rate in the world, well above the U.S. rate, and on par with crime-ridden South Africa.⁵⁶ In February 2001, it was reported that 26 percent of persons living in England and Wales had been victims of crime in 1999.⁵⁷ Home Secretary Jack Straw admitted, “levels of victimisation are higher than in most comparable countries for most categories of crime.” On May 4, 2001, *The Telegraph* disclosed that the risk of a citizen being assaulted was “higher in Britain than almost anywhere else in the industrialized world, including America.”⁵⁸

As King’s College observed, with passage of the Firearms Act of 1997, “it was confidently assumed that the new legislation effectively banning handguns would have the direct effect of reducing certain types of violent crime by reducing access to weapons.”⁵⁹ The news media promised that the “world’s toughest laws will help to keep weapons off the streets.”⁶⁰

Yet faster than British gun-owners could surrender their previously-registered handguns for destruction, guns began flooding into Great Britain from the international black market (especially from eastern Europe and China), driven by the demands of the country’s rapidly developing criminal gun culture.⁶¹

It is true that there are far fewer gun deaths in Great Britain than in the United States. Most of the difference is due to different methods of suicide; guns being scarce in Great Britain, suicides are perpetrated with other methods.

The one major criminal justice statistic in which Great Britain appears to be doing better than the U.S. is the homicide rate, with the U.S. rate at a little more than 4, and the England and Wales rate at 1.4. However, the U.S. rate is based on initial reports of homicides, and includes lawful self-defense killings (about 10-15% of the total); the England and Wales rate is based only on final dispositions, so that an unsolved murder, or a murder which is pleaded down to a lesser offense, is not counted a homicide. In addition, multiple murders are counted as only a single homicide for Scottish statistics.⁶²

But let’s assume that the entire difference is the homicide rates between the U.S. and Great Britain is due to gun control. The advocates of British-style controls in America ought to acknowledge the fearsome price that gun control has exacted on the British people: an astronomical rate of rape, of home invasions, and of violent crime in general.

Registration

An important difference between Great Britain and the United States is that in Great Britain, many people complied with gun confiscation because their guns were already registered.

The evidence is overwhelming that Americans will not comply with gun confiscation programs; a recent Rasmussen poll showed that 65 percent of American gun owners would not obey government orders to surrender their guns.

Nor will Americans obey laws which retroactively require them to register their guns. During the first phase of the “assault weapon” hoax, several states and cities passed bans, and allowed grandfathered owners to keep the guns legally by registering the guns. The non-compliance rates for retroactive registration were always at least 90%, and frequently much higher than that.⁶³

Americans are quite aware that gun registration can be a tool for gun confiscation. That is why Congress has enacted three separate laws (1941, 1986, and 1993) to prohibit federal gun registration. Congress first acted in 1941 because Congress saw how Hitler and Stalin had been using gun registration for confiscation.⁶⁴ Since then, registration lists have been used in many countries, and in New York City, for confiscation. Indeed, even if we look only at registration laws enacted by democratic nations, in most countries gun registration lists have eventually been used for the confiscation of many firearms.

Congress cannot expand or contract the judicially-declared scope of a constitutional right;⁶⁵ but Congress can, under section 5 of the Fourteenth Amendment, enact “prophylactic” measures to prevent state and local governments from endangering civil rights,⁶⁶ provided that these laws are “congruent and proportional” to the problem that Congress is addressing.⁶⁷ Congress should use this power to prohibit all state and local registration of guns and gun owners, and to require the destruction of any existing records.

Persons who are advocating gun confiscation are irresponsible in the extreme. Confiscation would endanger the lives of law enforcement officers who were ordered to carry it out. We should remember that the political dispute between the American Colonies and Great Britain turned into a shooting war precisely at the moment when the British attempted house-to-house gun confiscation.⁶⁸

Mass prohibitions of guns or gun accessories invite a repetition of the catastrophe of alcohol prohibition. Just as alcohol prohibition in the 1920s and drug prohibition in modern times have spawned vast increases in state power, and vast infringements on the Bill of Rights, another national war against the millions of Americans who are determined to possess a product which is very important to them is almost certain to cause tremendous additional erosion of constitutional freedom and traditional liberty. Legal and customary protections unreasonable search and seizure, against invasion of

privacy, against selective enforcement, and against harsh and punitive statutes would all suffer.⁶⁹

What Can be Done?

Acknowledging success

Regarding firearms crime in general (and not just the highly-publicized mass homicides), we should start by acknowledging the success of policies of the last three decades. Since 1980, the U.S. homicide rate has fallen by over half, from more than 10 victims per 100,000 population annually, to under 5 today.⁷⁰

Homicide, as horrifying as it is, did not make the top fifteen causes of death for 2011, according to preliminary data published by the Centers for Disease Control.⁷¹ Of the 2,512,873 total deaths for that year, the large majority were caused by health-related problems. The fifth leading cause of death was accidents, at 122,777 deaths. Suicide made the top ten with 38,285 deaths.

Appropriately, the media tend to report homicides much more frequently and emphatically than they report deaths from other causes. The problem is that the uncritical consumer of media might develop a skewed perspective of the actual risks he or she faces.

In 2011, homicides numbered 15,953, or 0.63 percent of all deaths. Of those, 11,101 were caused by “discharge of firearms”—or nearly 70 percent of all homicides.

The vast majority of these were from handguns, which shotguns in second place. The FBI reports that in 2011, 13 percent of homicides were committed with “knives or cutting instruments,” while nearly 6 percent were committed with “personal weapons” such “hands, fists, feet, etc.”⁷²

Most of the guns which are inaccurately called “assault weapons” are rifles. All types of rifles combined comprise only about two percent of homicide weapons—far less than “blunt instruments” such as hammers, clubs, and so on.

As for accidents in 2011, 34,676 deaths were caused by “motor vehicle accidents”; 33,554 deaths by “accidental poisoning and exposure to noxious substances”; 26,631 deaths by falls; 3,555 deaths by “accidental drowning and submersion”; and 851 deaths by “accidental discharge of firearms.”⁷³

Regarding violent crime in general, violent crime has been on a 20-year decline, so that today Americans are safer from violent crime than at any time since the early 1960s.⁷⁴

The news is even better for young people. According to Bureau of Justice Statistics (part of the U.S. Department of Justice), “From 1994 to 2010, the overall rate of serious violent crime against youth declined by 77%.”⁷⁵

These successes have taken place during a period when American gun ownership has soared. In 1964, when crime was about the same as it is now,

per capita gun ownership was only .45, less than 1 gun per 2 Americans. In 1982, there were about .77 guns per capita. (About 3 guns per 4 Americans). By 1994, that had risen to .91 (9 guns per 10 Americans). Today, there are slightly more guns in America than Americans. We have increased from 232 million guns in 1982 to over 308 million in 2010.⁷⁶

The causes of crime fluctuations are many. They include (among other things) changes in illegal drug activity and government enforcement thereof, changes in police tactics, changes in incarceration rates, changes in the average age of the population (which in the U.S. has been increasing), and changes in reporting (which can mask real changes in underlying crime trends).

It would not be accurate to say that increased gun ownership, and the spread of laws allowing the licensed carry of handguns is the only cause of progress that has been made in recent decades. We can say with certainty that “more guns” is not associated with “more crime.” If anything, just the opposite is true.

Armed defenders

Sandy Hook Elementary School was a pretend “gun free zone”: responsible adults were legally prohibited from effectively protecting the children in their care, while an armed criminal was could not be prevented from entering.

What did finally stop the murderer? He killed himself just before being confronted by men carrying guns, guns that no doubt included “assault weapons” with “high-capacity magazines.” As the Associated Press reports, the murderer “shot himself in the head just as he heard police drawing near to the classroom where he was slaughtering helpless children.”⁷⁷

The Newtown murders took place in a state with a ban on “assault weapons,” and with a strict system of gun owner licensing and registration—one of the most restrictive in the nation. Not even the most restrictive laws (short of complete prohibition of all legal gun ownership) can remedy the problems of an absent, divorced, and detached father, and a custodial mother who is so recklessly irresponsible that even while she tells people in town about her plans to have her son committed to a mental institution, she leaves her registered guns readily accessible to him.

Armed guards are generally successfully at deterring the robbery of diamond stores and banks, and they equally legitimate for preventing the murder of children, who are far more valuable than diamonds or greenbacks.

There are at least 10 cases in which armed persons have stopped incipient mass murder: Pearl High School in Mississippi; Sullivan Central High School in Tennessee; Appalachian School of Law in Virginia; a middle school dance in Edinboro, Pa.; Players Bar and Grill in Nevada; a Shoney's restaurant in Alabama; Trolley Square Mall in Salt Lake City; New Life Church in

Colorado; Clackamas Mall in Oregon (three days before Sandy Hook); Mayan Palace Theater in San Antonio (three days after Sandy Hook).

Sometimes the hero was an armed school guard (Sullivan Central High). Sometimes it was an off-duty police officer or mall security guard (Trolley Square, Mayan Theater, Clackamas Mall and the Appalachian Law School, where two law students, one of them a police officer and the other a former sheriff's deputy, had guns in their cars). Or a restaurant owner (Edinboro). Or a church volunteer guard with a concealed carry permit (Colorado). Or a diner with a concealed carry permit (Alabama and Nevada). At Pearl High School, it was the vice principal who had a gun in his car and stopped a 16-year-old, who had killed his mother and two students, before he could drive away, perhaps headed for the junior high.

For schools, Utah provides a model. In Utah, if a law-abiding adult passes a fingerprint-based check and a safety training class, then he or she is issued a permit to carry a concealed handgun throughout the state. Thus, teachers may carry at school. Several Texas school districts also encourage armed teachers. Connecticut, however, is similar to most of the other 40 other states that generally allow law-abiding adults to carry in public places: It limits where guns may be carried, and no civilian, not even teachers and principals, may carry at school.

Anti-gun ideologues invent all sorts of fantasy scenarios about the harms that could be caused by armed teachers. But the Utah law has been in effect since 1995, and Texas since 2008, with not a single problem.

Gun prohibitionists also insist that armed teachers or even armed school guards won't make a difference. But in the real world, they have — even at Columbine, where the armed “school resource officer” (a sheriff's deputy, in this case) was in the parking lot when the first shots were fired. The officer twice fired long-distance shots and drove the killers off the school patio, saving the lives of wounded students there. Unfortunately, however, the officer failed to pursue the killers into the building—perhaps due to a now-abandoned law enforcement doctrine of waiting for the SWAT team to solve serious problems.

Whatever should be done in the long run, the long gun will be much too late to stop the next copycat sociopath who attacks a school (or a mall or movie theater). More concealed carry laws like the ones in Utah and Texas are the best way to save lives right now. Teachers who are already licensed to carry a gun everywhere else in the state should not be prevented from protecting the children in their care.

Doing something effective

While armed defense is a necessity, in the short run, to thwart copycat killers, long-term solutions are also necessary.

A very large proportion of mass murders—and about one-sixth of “ordinary” murderers—are mentally ill. Better care, treatment, and stronger

laws for civil commitment could prevent many of these crimes. Of course any involuntary commitment must respect the Constitution which, as applied by the U.S. Supreme Court, requires proof by “clear and convincing evidence” that the individual is a danger to himself or others in order for the person to be committed. Better mental health treatment is expensive in the short run, but pays for itself in the long run, through reduced criminal justice and imprisonment costs, not to mention reduced costs to victims.⁷⁸

Although “universal background checks” are, at the highest level of generality, a popular idea, one should pay attention to the details. Every “background check” bill introduced in Congress in the last several years has come from Michael Bloomberg’s gun prohibition lobby, and has included a gun registration component. For the reasons detailed above, gun registration is anathema to the Second Amendment.

Consider, for example, the misnamed “Fix Gun Checks Act,” from the previous Congress, S. 436 (sponsored by Sen. Schumer). Here is what the bill actually would have done:

- Create a national firearms registry.
- Make it a federal felony to temporarily allow someone to use or hold’s one’s firearm in the following circumstances:
 - While a friend visits your home.
 - While taking a friend target shooting on your property, or on public lands where target shooting is allowed.
 - While instructing students in a firearms safety class.
- Current law bans gun possession if there has been a formal determination that a person’s mental illness makes him a danger to himself or others. S. 436 would abolish the requirement for a fair determination and a finding of dangerousness. Instead, S. 436 would ban gun possession by anyone who has ever been ordered to receive counseling for any mental problem. This would include:
 - A college student who was ordered to get counseling because the school administration was retaliating against him for criticizing the administration.
 - An adult who when in fifth grade was ordered to receive counseling for stuttering, for attention deficit disorder, or for mathematics disorder.
 - A person who was once ordered to receive counseling for homosexuality, cross-dressing, or for belonging to some other sexual minority.
 - A woman who was raped in an elevator, and who has therefore developed a phobia about elevators.
- S. 436 rejects the constitutional standards of due process and fair trial.
- S. 436 allows for the prohibition of gun ownership based on an arrest, rather than a conviction. Thus, S. 436 would make it gun possession a

felony for a person who was once arrested for marijuana possession, and was later found innocent because a police officer mistook tobacco for marijuana.

- Among the reasons that S. 436 was unconstitutional was because it:
 - Strips a person of a fundamental constitutional right because of an arrest, rather than a conviction.
 - Is purportedly based on the congressional power “to regulate Commerce . . . among the several States”—but its transfer bans apply solely to transfers that are not commerce, and are not interstate.
 - Violates the scope of gun control laws approved by the Supreme Court in *District of Columbia v. Heller*. The Heller Court approved of some “laws imposing conditions and qualifications on the commercial sale of arms.” Yet S. 436 attempted to control non-retail “transfers” that are not even “commercial” or “sales”—such as letting a friend use a gun while target shooting.
 - Is unconstitutionally “overbroad” because rather than banning gun possession by persons who have been determined to pose a threat to themselves or others (current laws) bans gun possession by anyone who has been ordered to get counseling even for non-dangerous mental problems (such as nicotine dependence, or lack of interest in sex).
 - Violates the Fifth Amendment requirement of due process of law, because it imposes gun bans without due process—such as a mere arrest, or the mere order by a school employee or work supervisor that a person receive counseling. Regardless of whether that employee or supervisor offered the person a fair hearing, and regardless of whether the counselor eventually determined that the person had no mental problem at all.
 - Violates the equal protection of the laws guarantee which is implicit in the Fifth Amendment, because it bans possession for categories of persons who cannot rationally be classified as more dangerous than other persons. The victims of S. 436’s unfair gun bans would include homosexuals and other sexual minorities, persons who have a phobia about elevators or diseases, and many other persons who are ordered into counseling for reasons that have nothing to do with dangerousness.

Today, the media are reporting that a backroom deal is being worked out in the Senate on “universal background checks.” Senators who sincerely follow their oath to protect the United States Constitution would not support a bill which has a title of “Universal Background Checks,” but which contains any of the poisonous anti-constitutional provisions of last session’s Bloomberg “background checks” bill.

Moreover, without universal gun registration, mandated background checks on purely private sales (e.g., friends in a hunting club selling guns to each other) are impossible to enforce. Universal gun registration is impossible in practice, and would lead to massive resistance. When Canada tried to impose universal gun registration, the result was a complete fiasco. The registration system cost a hundred times more than promised. Non-compliance (by Canadians, who are much more compliant with government than Americans) was at least fifty percent. And the registration system proved almost entirely useless in crime solving or crime prevention. In 2012, the Canadian government repealed the registration law, and ordered all the registration records destroyed.

Obviously, criminals who are selling guns to each (which is completely illegal, and already subject to severe mandatory sentences) are not going to comply with a background check mandate. It will be irrelevant to them.

Ordinary law-abiding citizens who selling guns to each other might be happy to take the gun into a firearm store for a voluntary check, provided that the check is not subject to a special fee, that there is no registration, and that the check is convenient and expeditious. Changing statutes and regulations so that gun stores can carry out voluntary checks for private sellers is the most that can be expected, realistically. President Obama's order that the Bureau of Alcohol, Tobacco, Firearms and Explosives provide instructions to dealers on how to facilitate voluntary checks is a good idea. In light of this order, there is no need for Congress to enact additional legislation to impose a futile and unenforceable mandate.

"Doing something" is the slogan for politicians who seek merely to exploit terrible crimes for self-serving purposes. "Doing something effective" is the approach of people who want to save lives and protect the public, especially children.

The lives of Americans, especially schoolchildren, depend on the choice that elected officials make between these two alternatives.

¹ Some of this testimony is based on a Policy Analysis which Kopel and co-author Ari Armstrong are writing for the Cato Institute. The published Cato version will include more complete endnotes, which were impossible to provide for this testimony, given the very short time available.

² Christopher S. Koper, Daniel J. Woods, and Jeffrey A. Roth, "An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003: Report to the National Institute of Justice, United States Department of Justice," University of Pennsylvania, June 2004, http://www.sas.upenn.edu/jerrylee/research/aw_final2004.pdf.

³ Charles Krauthammer, "Disingenuous Debate on Repeal of Assault Weapons Ban," *Chicago Tribune*, April 8, 1996, http://articles.chicagotribune.com/1996-04-08/news/9604080024_1_assault-weapons-ban-gun-control-crime-rate.

⁴ Josh Sugarmann, "Conclusion," *Assault Weapons and Accessories in America*, Violence Policy Center, 1988, <http://www.vpc.org/studies/awaconc.htm>.

⁵ See, for example, David Kopel, "Guns, Mental Illness and Newtown," *Wall Street Journal*, December 17, 2012,

<http://online.wsj.com/article/SB10001424127887323723104578185271857424036.html>.

⁶ See Ari Armstrong, "Civilian Responses to Active Shooters," *Free Colorado*, July 21, 2012, <http://ariarmstrong.com/2012/07/civilian-responses-to-active-attackers>; *Active Shooter Survival* (DirectMeasures, 2012), Survival Edge Series, Disc 1, <http://www.directmeasures.com/buy-ACT-LastResort.htm>.

⁷ Alexander Abad-Santos, "This Is What Teachers Learning to Shoot Guns Look Like," *Atlantic Wire*, December 28, 2012, <http://www.theatlanticwire.com/national/2012/12/post-newtown-teacher-gun-training-classes/60409>; Angela K. Brown, "Texas Town Allows Teachers to Carry Concealed Guns," Associated Press, December 20, 2012, <http://www.usatoday.com/story/news/nation/2012/12/20/texas-town-teachers-guns/1781663>; Cathy Lynn Grossman and Greg Toppo, "Trainer for Gun-Toting Teachers: 'Make it Hard to Kill a Kid,'" *USA Today*, December 28, 2012, <http://www.usatoday.com/story/news/nation/2012/12/27/gun-classes-teachers-utah-ohio-shooting/1793773>; Michelle Malkin, "The Gift of Self-Empowerment," December 26, 2012, <http://michellemalkin.com/2012/12/26/the-gift-of-self-empowerment>.

⁸ Tim Graham, "Des Moines Register Publishes Gun-Ban Column Advocating Deadly Violence Against NRA, GOP Leaders," *Fox News*, January 2, 2013, <http://www.foxnews.com/opinion/2013/01/02/liberal-ex-columnist-death-threats-published-in-des-moines-register>.

⁹ Douglas Anthony Cooper, "A Proven Way to End the Gun Slaughter: Will We Fight for It?", *Huff Post Politics*, December 26, 2012, http://www.huffingtonpost.com/douglas-anthony-cooper/proven-way-end-slaughter_b_2341815.html.

¹⁰ Justin Peters, "How Many Assault Weapons Are There In America? How Much Would It Cost the Government To Buy Them Back?", *Slate*, December 20, 2012, http://www.slate.com/blogs/crime/2012/12/20/assault_rifle_stats_how_many_assault_rifles_are_there_in_america.html.

¹¹ Some machine guns are or may be set to fire a certain number of rounds with one pull of the trigger.

¹² "Fully-Automatic Firearms," NRA-ILA, July 29, 1999, <http://www.nraila.org/news-issues/fact-sheets/1999/fully-automatic-firearms.aspx>; "National Firearms Act (NFA)—Machine Guns," <http://www.atf.gov/firearms/fag/national-firearms-act-machine-guns.html>, accessed January 3, 2013.

¹³ See David B. Kopel, *Guns: Who Should Have Them* (New York: Prometheus Books, 1995), p. 162; *Defense Intelligence Agency, Small Arms Identification and Operation Guide—Eurasian Communist Countries* (Washington, D.C.: Government Printing Office, 1988), p. 105.

¹⁴ However, the energy which is used to turn the cylinder of the revolver (bringing the next round into place, ready to fire) comes from the user pulling the trigger. (The trigger is mechanically linked to the cylinder, and a trigger pull performs the "double action" of cocking the hammer and firing a round.) Thus, the revolver does not use gunpowder energy in order to load the next round. So even though a revolver is comparable to a semi-automatic handgun in that each pull of the trigger chambers and fires one round, a revolver is not a semi-automatic.

¹⁵ The formula is: $KE = \frac{1}{2} MV^2$. Or in words: one-half of mass times the square of the velocity.

¹⁶ Rifles have longer barrels than handguns, and rifle cartridges generally burn more gunpowder. Thus, a bullet shot from a rifle spends more time traveling through the barrel than does a bullet shot from a handgun. As a result, the rifle bullet receives a longer, more powerful push from the expanding cloud of gunpowder in the barrel. So rifles generally deliver more kinetic energy than do handguns. (As for shotguns, the mass of shot pellets is much heavier than any single rifle or handgun bullet, so shotguns have very high kinetic

energy at short ranges. But their kinetic energy drops rapidly, because the round pellets rapidly lose speed due to air friction. Rifle and handgun bullets are far more aerodynamic than are shotgun pellets.)

¹⁷ If the gun's caliber is .17, that means the gun's barrel is 17/100 of an inch wide, and can accommodate a bullet which is very slightly smaller than that. So a .38 caliber bullet is bigger than a .17 caliber bullet, and a .45 caliber bullet is bigger than either of them. (Calibers can also be expressed metrically. 9mm is nearly the same as .357, which is slightly smaller than .38).

The bullet's size depends on its width (caliber) and on its length. So one .45 caliber bullet might be longer, and hence heavier, than another .45 caliber bullet.

For any particular gun in any particular caliber, there are a variety of rounds available, some of which have more gunpowder than others. More gunpowder makes the bullet fly straighter for longer distances (especially important in many types of hunting or target shooting); less gunpowder reduces recoil, and makes the gun more comfortable to shoot and more controllable for many people.

¹⁸ Measured at the muzzle, Kinetic energy begins declining as soon as the bullet leaves the barrel, because air friction progressively reduces velocity.

¹⁹ For details, see David B. Kopel, *Guns: Who Should Have Them* (New York: Prometheus Books, 1995), pp. 168–70.

²⁰ The assertion that so-called “assault weapons” are “high-velocity” is true only in the trivial sense that most guns which are called “assault weapons” are rifles, and rifles are generally higher velocity than handguns or shotguns.

As for the handguns which are sometimes dubbed “assault weapons,” they are necessarily lower velocity, with less powerful bullets, than the most powerful handguns. The most powerful handgun calibers, such as .44 magnum or .454 Casull (often carried by hikers for self-defense against bears) have so much gunpowder that the relatively delicate mechanisms of a semi-automatic handgun cannot handle them. These heavy-duty calibers are available only for revolvers.

²¹ Quoted in Randy E. Barnett and Don B. Kates, “Under Fire: The New Consensus on the Second Amendment,” *Emory Law Journal*, vol. 45, 1996, reproduced at http://www.bu.edu/rbarnett/underfire.htm#Document0zzFN_B535. Feinstein's quote is from an interview with Lesley Stahl on *60 Minutes* in February 1995.

²² Jacob Sullum, “How Do We Know an ‘Assault Weapon’ Ban Would Not Have Stopped Adam Lanza? Because It Didn't,” *Reason*, December 17, 2012, <http://reason.com/blog/2012/12/17/how-do-we-know-an-assault-weapon-ban-wou>.

²³ Christopher S. Koper, Daniel J. Woods & Jeffrey A. Roth, “An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003: Report to the National Institute of Justice, United States Department of Justice,” University of Pennsylvania, June 2004, http://www.sas.upenn.edu/jerrylee/research/aw_final2004.pdf.

²⁴ Jeffrey A. Roth & Christopher S. Koper, “Impacts of the 1994 Assault Weapons Ban: 1994–96,” National Institute of Justice Research in Brief, U.S. Department of Justice, March 1999, <https://www.ncjrs.gov/pdffiles1/173405.pdf>.

²⁵ “Stopping the Spread of Deadly Assault Weapons,” <http://www.feinstein.senate.gov/public/index.cfm/assault-weapons>, accessed January 2, 2013. For another reply to Feinstein's claims, see Gregory J. Markle, “A Short Analysis of Senator Feinstein's ‘Proof’ of the Efficacy of the 1994 Assault Weapons Ban,” December 29, 2012, http://pc3c.org/files/feinstein_fisking.pdf.

²⁶ Jeffrey A. Roth & Christopher S. Koper, “Impact Evaluation of the Public Safety and Recreational Firearms Use Protection Act of 1994: Final Report,” Urban Institute, March 13, 1997, http://www.sas.upenn.edu/jerrylee/research/aw_final1997.pdf.

²⁷ John Lott, *The Bias Against Guns: Why Almost Everything You've Heard About Gun Control Is Wrong* (Washington, D.C.: Regnery Publishing, 2003), p. 214.

Looking at the raw crime data, Lott observes:

The comparison group here is the forty-five states that did not adopt a ban. For both murder and robbery rates, the states adopting assault weapons bans were experiencing a relatively faster drop in violent crimes prior to the ban and a relatively faster increase in violent crimes after it. For rapes and aggravated assaults, the trends before and after the law seem essentially unchanged.

Based on the crime data, Lott concludes that it is “hard to argue that . . . banning assault weapons produced any noticeable benefit in terms of lower crime rates.” In statistical analyses that seek to control for other possible factors in the fluctuations of crime rates, Lott finds that, if anything, the state-level “assault weapons” bans had an adverse effect on crime rates:

Presumably if assault weapons are to be used in any particular crimes, they will be used for murder and robbery, but the data appears more supportive of an adverse effect of an assault weapons ban on murder and robbery rates . . . , with both crime rates rising after the passage of the bans. . . . Murder and robbery rates started off relatively high in the states that eventually adopted a ban, but the gap disappears by the time the ban is adopted. Only after instituting the ban do crime rates head back up. There is a very statistically significant change in murder and rape rate trends before and after the adoption of the ban. . . . It is very difficult to observe any systematic impact of the ban on rape and aggravated assault rates.

²⁸ Mark Follman, Gavin Aronsen, and Deanna Pan, “A Guide to Mass Shootings in America,” *Mother Jones*, December 15, 2012, <http://www.motherjones.com/politics/2012/07/mass-shootings-map>; see also Mark Follman, Gavin Aronsen, and Deanna Pan, “US Mass Shootings, 1982–2012: Data from Mother Jones’ Investigation,” *Mother Jones*, December 28, 2012, <http://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data>.

²⁹ Thomas C. Hayes, “Gunman Kills 22 and Himself in Texas Cafeteria,” *New York Times*, October 17, 1991, <http://www.nytimes.com/1991/10/17/us/gunman-kills-22-and-himself-in-texas-cafeteria.html>.

³⁰ “About Suzanna,” http://www.suzannahupp.com/?page_id=2, accessed January 13, 2013.

³¹ Most of the text in this paragraph is adapted from David B. Kopel, *Guns: Who Should Have Them* (New York: Prometheus Books, 1995), p. 164. That book in turn cites William R. Magrath, “An Open Letter to American Politicians,” *Police Marksman*, May–June 1989, p. 19; Edward Ezell, *The AK-47 Story* (Mechanicsburg, PA: Stackpole Books, 1986); Kent Jenkins Jr., “Calls for Ban Boost Assault Rifle Sales,” *Washington Post*, March 6, 1989, p. B1; and “Assault Weapon Import Control Act of 1989,” 1989: Hearings on H.R. 1154 before Subcommittee on Trade of the House Committee on Ways and Means, 101st Cong., 1st Sess. (1989).

³² Douglas Anthony Cooper, “A Proven Way to End the Gun Slaughter: Will We Fight for It?,” *Huff Post Politics*, December 26, 2012, http://www.huffingtonpost.com/douglas-anthony-cooper/proven-way-end-slaughter_b_2341815.html.

³³ Charles Krauthammer, “Disingenuous Debate on Repeal of Assault Weapons Ban,” *Chicago Tribune*, April 8, 1996, http://articles.chicagotribune.com/1996-04-08/news/9604080024_1_assault-weapons-ban-gun-control-crime-rate.

³⁴ Christian Chung, “Dianne Feinstein New Assault Weapons Ban Doesn’t Go Far Enough: It’s Only the Start,” *Policymic*, December 29, 2012, <http://www.policymic.com/articles/21639/dianne-feinstein-new-assault-weapons-ban-doesn-t-go-far-enough-it-s-only-the-start>.

³⁵ Robert Wright, "A Gun Control Law That Would Actually Work," *Atlantic*, December 17, 2012, <http://www.theatlantic.com/national/archive/2012/12/a-gun-control-law-that-would-actually-work/266342>.

³⁶ The "features" on semi-automatic shotguns under the ban are similar to the features list for rifles, with one important addition. Feinstein outlaws any semi-auto shotgun that has "A fixed magazine with the capacity to accept more than 5 rounds." This bans a wide variety of home defense shotguns. It also means that if you use a magazine extender to turn your 5-round Remington 1100 into a 7-round gun, you are now an instant felon.

³⁷ See Clayton E. Cramer, "High-Capacity-Magazine Bans," *National Review*, December 19, 2012, <http://www.nationalreview.com/articles/336006/high-capacity-magazine-bans-clayton-e-cramer>. (If the final round from the last magazine has been fired, the first round from the new magazine must be chambered before the gun will fire. Chambering a round involves "racking" the gun by manually operating the gun's slide mechanism, a process that typically takes fractions of a second.)

³⁸ The G17 (standard), G19 (compact), and G34 (competition). Optional magazines of 19 or 33 rounds are available. The subcompact G26 comes with a 10 round magazine, with 12, 15, 17, 19, and 33 round magazines available.

For a 9mm handgun standard-sized handgun, the 15 or 17 round magazine is "normal capacity," not "high capacity," whereas a 10-round magazine is "restricted capacity." The Glock 30 SF, a larger .45 caliber, comes standard with a 10-round magazine, with factory options of 9 and 13 rounds. Because the bullets are larger (.45 inch vs. 9 mm, which is about .35 inch), fewer can fit in a given space—hence, the smaller magazine capacity. Other Glock .45 handguns come standard with larger or smaller magazines, depending on the size of the gun. "Glock 19 Gen4," <http://us.glock.com/products/model/g19gen4>; "Glock 30 SF," <http://us.glock.com/products/model/g30sf>; "Glock 21 Gen4," <http://us.glock.com/products/model/g21gen4>; "Glock 36," <http://us.glock.com/products/model/g36>; each accessed January 3, 2013.

³⁹ A "high-capacity" magazine on his hip, and often he carries a pump-action shotgun or "assault" rifle (or both) in his trunk. A look at a forum thread at Officer.com, "What Gun Does Your Department Use" (see <http://forums.officer.com/t138759>), offers an insightful look at typical police weaponry—the list includes Glocks with 17-round magazines and AR-15 semi-automatic rifles.

Regarding magazine capacity, one veteran from a municipal police department in Texas advises:

I would not carry a duty gun that carries fewer than 12 rounds in the magazine. One of the great advantages offered by semi-automatic handguns is the increased carrying capacity. Most manufacturers have increased the capacity of .45 pistols to at least 12 rounds, so this would be the minimum I would be comfortable with

"What is the Best Pistol for Police Officers?," *Spartan Cops*, March 30, 2009, <http://www.spartancops.com/pistol-police-officers>; "About," *Spartan Cops*, <http://www.spartancops.com/about>. Nashville Police can now carry their personal AR-15s in their vehicles while on duty. <http://tnne.ws/ULBOHY>.

⁴⁰ What about magazines? "The failure to reduce LCM use has likely been due to the immense stock of exempted pre-ban magazines, which has been enhanced by recent imports," the 2004 paper speculates. The paper notes that "millions" of "assault weapons" and "large-capacity magazines" were "manufactured prior to the ban's effective date."

⁴¹ Still, if one wants to speculate, Koper, Woods, and Roth do so in an articulate fashion. Their 2004 report states:

[S]emiautomatic weapons with LCMs [large-capacity magazines] enable offenders to fire high numbers of shots rapidly, thereby potentially increasing both the number of persons wounded per gunfire incident (including both intended targets and innocent bystanders) and the number of gunshot victims suffering multiple wounds, both of which would increase deaths and injuries from gun violence.

Because of this, the paper's writers speculate, "the LCM ban has greater potential for reducing gun deaths and injuries than does the AW [assault weapons] ban." They continue:

[A] ban's impact on gun violence is likely to be small at best, and perhaps too small for reliable measurement. . . . Guns with LCMs are used in up to a quarter of gun crimes, but it is not clear how often the outcomes of gun attacks depend on the ability to fire more than 10 shots (the current limit on magazine capacity) without reloading.

Nonetheless, reducing crimes with . . . LCMs could have non-trivial effects on gunshot victimizations. As a general matter, hit rates tend to be low in gunfire incidents, so having more shots to fire rapidly can increase the likelihood that offenders hit their targets, and perhaps bystanders as well. While not entirely consistent, the few available studies contrasting attacks with different types of guns and magazines generally suggest that attacks with semiautomatics—including AWs and other semiautomatics with LCMs—result in more shots fired, persons wounded, and wounds per victim than do other gun attacks.

The authors of the 2004 report, then, believe that a ban on magazines holding more than ten rounds likely would not reduce the number of crimes committed, but that such a ban might reduce the harm of certain types of rare crimes (presumably mass murders with many rounds fired and "shootouts"). The authors do not (and do not claim to) present convincing evidence that their hypothesis is correct; they present their claim as reasonable speculation.

However, a careful reading of the paragraphs cited above reveals one of the major flaws of the writers' argument. The writers claim that "attacks with semiautomatics"—whether or not they are used with "large capacity" magazines—result in greater harm. There are good reasons to think that, even if criminals could somehow be restricted to using ten-round magazines—and obviously they cannot—they could typically cause the same level of harm, and sometimes more harm.

The general problem with the claims of those who wish to ban magazines holding more than ten rounds is that such advocates fail to account for the adaptability of criminals. Such advocates assume they can hold "all other things equal," when clearly criminals thrive on adapting their plans in order to surprise and overwhelm their intended victims.

⁴² Josh Sugarmann, "Drug Traffickers, Paramilitary Groups . . .," *Assault Weapons and Accessories in America*, Violence Policy Center, 1988, <http://www.vpc.org/studies/awadrug.htm>.

⁴³ David B. Kopel, Paul Gallant & Joanne D. Eisen, "The Arms Trade Treaty: Zimbabwe, the Democratic Republic of the Congo, and the Prospects for Arms Embargoes on Human Rights Violators," 114 *Penn State Law Review* 891, at note 46 (2010).

⁴⁴ <http://defcad.org/>

⁴⁵ "Third of High School Seniors Take Marijuana," *News Medical*, December, 22, 2012, <http://www.news-medical.net/news/20121222/Third-of-high-school-seniors-take-marijuana.aspx>.

⁴⁶ Alicia A. Caldwell, "James Holmes' Gun Jammed During Aurora Attack, Official Says," *Associated Press*, July 22, 2012, http://www.huffingtonpost.com/2012/07/22/james-holmes-gun-jammed-aurora-colorado-dark-knight-shooting_n_1692690.html.

⁴⁷ An additional fact about this case is that, had the Arizona murderer not been tackled by bystanders, he would have faced armed opposition moments later. Joe Zamudio, another man who helped restrain the murderer, said the following during an MSNBC interview:

I carry a gun, so I felt like I was a little bit more prepared to do some good than maybe somebody else would have been. . . . As I came out of the door of the Walgreens . . . I saw several individuals wrestling with him, and I came running. . . . I saw another individual holding the firearm, and I kind of assumed he was the shooter, so I grabbed his wrists, and . . . told him to drop it, and forced him to drop the gun on the ground. When he did that, everybody said, no, it's this guy . . . and I proceeded to help hold that man down. . . . When I came through the door, I had my hand on the butt of my pistol, and I clicked the safety off. I was ready to kill him. But I didn't have to do that, and I was very blessed I didn't have to go to that place. Luckily, they'd already begun the solution, so all I had to do is help. If they hadn't grabbed him, and he'd have been still moving, I would have shot him.

We were unable to locate the video on the MSNBC web page. It is reproduced at <http://youtu.be/v-3GTwalrGY>.

In return for this profoundly courageous act of heroism in which Zamudio ran toward gunfire, William Saletan libeled Zamudio in an article for *Slate*, wrongly claiming he “nearly shot the wrong man.” William Saletan, “Friendly Firearms,” *Slate*, January 11, 2011, http://www.slate.com/articles/health_and_science/human_nature/2011/01/friendly_firearms.html.

Obviously in the brief seconds of the incident, Zamudio considered the possibility that the man holding the gun might be the perpetrator of the crime—and then Zamudio acted with restraint, appropriately disarmed the man holding the gun, and helped restrain the perpetrator. Although police in Arizona likely are more responsible with their firearms than are police in New York, the recent incident in which New York police shot nine bystanders illustrates that Zamudio did the other man holding the gun—and everyone else in the crowd—a profound favor by forcing him to drop it.) “NYPD: 9 Shooting Bystander Victims Hit By Police Gunfire,” *Associated Press*, August 25, 2012, <http://www.foxnews.com/us/2012/08/25/nypd-shooting-bystander-victims-hit-by-police-gunfire>.

⁴⁸ Philip Caulfield, “Sandy Hook Elementary School Shooter Adam Lanza Wore Earplugs, Rapidly Changed Clips, Shot Up Cars in Parking Lot: Report,” *New York Daily News*, January 7, 2013, <http://www.nydailynews.com/news/national/lanza-wore-earplugs-shot-cars-article-1.1234747>.

⁴⁹ Will Grant, “Active Shooter Response: Lessons for Experts,” *Blackwater*, January 6, 2013, <http://blackwaterusa.com/active-shooter-response-lessons-from-experts>.

Even if they resorted to revolvers, criminals could impose mass casualties. Recall that Robert Wright, a senior editor at the *Atlantic*, wants to ban all detachable magazines and all guns “that can hold more than six bullets.” In other words, he wants to ban the large majority of guns in existence. (Like Cooper, Wright totally ignores the use of guns in self-defense.) Even if we assume that criminals could not still purchase their weapons of choice on the black market—an assumption that is obviously false—Wright’s analysis of the likely results is faulty.

Wright tries to hold “other things equal” that cannot be held equal. Wright uses the example of the Newtown murders, noting that the criminal carried a rifle and two handguns and that he shot about twelve rounds before reaching the students. Wright supposes, “At that point, as he headed for the classrooms, he’d have six more rapid-fire bullets left, after which he’d have to reload his guns bullet by bullet.” Robert Wright, “A Gun Control Law That Would Actually Work,” *Atlantic*, December 17, 2012,

<http://www.theatlantic.com/national/archive/2012/12/a-gun-control-law-that-would-actually-work/266342>.

Wright ignores several obvious facts here. A criminal limited to six-round guns likely would choose larger-caliber guns and target each round more carefully. More significantly in a mass-murder scenario, a criminal would by no means be limited to three guns; he could easily carry many revolvers (or six-round semiautomatics). Like semi-automatics, double-action revolvers fire one round with each pull of the trigger.

For more on the effective firing rates of revolvers and other types of guns, see David B. Kopel, *Guns: Who Should Have Them* (New York: Prometheus Books, 1995), pp. 164–165 (The finger must accomplish more of the mechanical work with a double-action revolver.) Revolvers typically are extremely reliable, and often they are less expensive than other types of guns. Even a gun ban that banned most guns in existence—a far more ambitious proposal than legislation pertaining to the manufacture and sale of new “high capacity” magazines—would do nothing to curb black market sales, and it would have little or no impact on criminals’ ability to commit violent atrocities.)

⁵⁰ David B. Kopel, “Lawyers, Guns, and Burglars,” 43 *Arizona Law Review* 345 (2001).

⁵¹ “Scotland Worst for Violence – UN,” *BBC News*, Sept. 18, 2005 (“Scotland has been named the most violent country in the developed world by a United Nations Report.”).

⁵² Joyce Malcolm, *Guns and Violence: The English Experience* 141–142 (2002); Joseph Edward Olson & Clayton Cramer, “Gun Control: Political Fears Trump Crime Control,” 61 *Maine Law Review* 57–81 (2009), <http://ssrn.com/abstract=1083528>.

⁵³ David B. Kopel & Joseph P. Olson, “All the Way Down the Slippery Slope: Gun Prohibition in England, and Some Lessons for America,” 22 *Hamline Law Review* 399 (1999).

⁵⁴ House of Commons, Home Affairs – Second Report – Controls over Firearms, Session 1999–2000, Apr. 6, 2000, at ¶22, <http://www.publications.parliament.uk/pa/cm199900/cmselect/cmhaff/95/9502.htm>.

⁵⁵ *Illegal Firearms in the United Kingdom*, Centre for Defence Studies, King’s College London, Jul. 2, 2001, Working Paper 4.

⁵⁶ Nick Paton Walsh, “UK Matches Africa in Crime Surge,” *The Guardian*, Jun. 3, 2001.

⁵⁷ Sean O’Neill, “A Quarter of English are Victims of Crime,” *The Telegraph*, Feb. 23, 2001.

⁵⁸ Philip Johnston, “Britain Leads the World on Risk of Being Assaulted,” *The Telegraph*, May 4, 2001.

⁵⁹ *Illegal Firearms*, Working Paper 1, at 7.

⁶⁰ Philip Johnston, “World’s Toughest Laws Will Help to Keep Weapons off the Streets,” *The Telegraph*, Nov. 2, 1996.

⁶¹ *Illegal Firearms*, Working Paper 4, at 15.

⁶² See Joyce Malcolm, *Guns and Violence: The English Experience* 228–31 (2002); Patsy Richards, Homicide Statistics, Research Paper 99/56, House of Commons Library Social and General Statistics Section, May 27, 1999, at 9. See also Statistics Release, Homicides in Scotland in 2001 – Statistics Published: A Scottish Executive National Statistics Publication, Nov. 28, 2002, <http://www.scotland.gov.uk/stats/bulletins/00205-00.asp> (visited May 16, 2006), at Note 2 (“A single case of homicide is counted for each act of murder or culpable homicide irrespective of the number of perpetrators or victims.”)

⁶³ David B. Kopel, *Guns: Who Should Have Them?* (Prometheus Books, 1995).

⁶⁴ Stephen P. Halbrook, “Congress Interprets the Second Amendment: Declarations by a Co-Equal Branch on the Individual Right to Keep and Bear Arms,” 61 *Tenn. L. Rev.* 597 (1994).

⁶⁵ *City of Boerne v. Flores*, 521 U.S. 507 (1997).

⁶⁶ *Katzenbach v. Morgan*, 384 U.S. 641 (1966).

⁶⁷ *E.g.*, *Board of Trustees of Univ. of Alabama v. Garrett* (2001); *Nevada Dept. of Human Resources v. Hibbs* (2003),

⁶⁸ David B. Kopel, “How the British Gun Control Program Precipitated the American Revolution,” 38 *Charleston Law Review* 283 (2012), <http://ssrn.com/abstract=1967702>.

⁶⁹ For more detailed analysis of the civil rights implications of gun prohibition laws, see, e.g., David B. Kopel, *Peril or Protection? The Risks and Benefits of Handgun Prohibition*, 12 ST. LOUIS U. PUB. L. REV. 285, 319-23 (1993).

⁷⁰ "Estimated Crime in United States—Total," U.S. Department of Justice, Uniform Crime Reporting Statistics, <http://www.ucrdatatool.gov/Search/Crime/State/RunCrimeStatebyState.cfm>, accessed January 4, 2013.

⁷¹ Donna L. Hoyert and Jiaquan Xu, "Deaths: Preliminary Data for 2011," *National Vital Statistics Reports*, vol. 61, no. 6, October 10, 2012, p. 28, http://www.cdc.gov/nchs/data/nvsr/nvsr61/nvsr61_06.pdf.

⁷² "Murder, by State, Types of Weapons, 2011," *Crime in the United States 2011*, Table 7, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/tables/expanded-homicide-data-table-7>.

⁷³ Donna L. Hoyert and Jiaquan Xu, "Deaths: Preliminary Data for 2011," *National Vital Statistics Reports*, vol. 61, no. 6, October 10, 2012, pp. 41-42, http://www.cdc.gov/nchs/data/nvsr/nvsr61/nvsr61_06.pdf.

⁷⁴ For example, the homicide rate in 1962 and 1963 was 4.6 deaths per 100,000 population. In 1964 it was 4.8

⁷⁵ Nicole White & Janet L. Lauritsen, *Violent Crime Against Youth, 1994–2010*, Bureau of Justice Statistics, NCJ 240106 (Dec. 2012), <http://www.bjs.gov/content/pub/pdf/vcay9410.pdf>.

⁷⁶ Nicholas J. Johnson, David B. Kopel, Michael P. O'Shea & George Moscary, *Firearms Law and the Second Amendment: Regulation, Rights, and Policy* (Aspen Publishers 2012), online chapter 12, forthcoming at <http://firearmsregulation.org>.

⁷⁷ Matt Apuzzo and Pat Eaton-Robb, "Conn. Gunman Had Hundreds of Rounds of Ammunition," Associated Press, December 17, 2012, <http://bigstory.ap.org/article/agents-visit-conn-gun-shops-after-school-massacre>.

⁷⁸ Clayton E. Cramer, *My Brother Ron: A Personal and Social History of the Deinstitutionalization of the Mentally Ill* (2012).

PREPARED STATEMENT OF CHIEF JAMES JOHNSON

**TESTIMONY FOR
CHIEF JIM JOHNSON, BALTIMORE COUNTY, MARYLAND
CHAIR, NATIONAL LAW ENFORCEMENT PARTNERSHIP
TO PREVENT GUN VIOLENCE
Senate Judiciary Committee Hearing
Wednesday, January 30, 2013**

Mr. Chairman, Ranking Member, and Members of the Committee, I want to thank you for the opportunity to testify today. I am here on behalf of the National Law Enforcement Partnership to Prevent Gun Violence, an alliance of the nation's law enforcement leadership organizations concerned about the unacceptable level of gun violence in the United States.

The Partnership, founded in 2010, includes: the Commission on Accreditation of Law Enforcement Agencies; Hispanic American Police Command Officers Association; International Association of Campus Law Enforcement Administrators; International Association of Chiefs of Police; Major Cities Chiefs Association; National Association of Women Law Enforcement Executives; National Organization of Black Law Enforcement Executives; Police Executive Research Forum; and the Police Foundation.

We mourn those lost to gun violence, including the 20 children in Newtown, along with the six brave adults whose lives were cut short by a deranged individual armed with firepower originally designed for combat, not for gunning down innocent members of our communities.

More than 30 homicides occur in America each day. Two-thousand children, ages 18 and under, die of firearm-related deaths in the U.S. every year. In 2011, for the first time in 14 years, firearms were the leading cause of death for police officers killed in the line of duty. In just the two-week period after the Newtown massacre, six police officers were killed and 10 injured in 12 separate shootings.

In a one-week period in 2011, the Police Executive Research Forum (PERF) found that gun crime in six cities cost more than \$38 million, and in the year 2010 cost the entire country more than \$57 billion.

We urgently need Congress to address the rising epidemic of gun violence. Law enforcement leaders support the President's comprehensive approach, which includes enhancing safety at educational institutions and addressing mental health issues. But on behalf of my colleagues across the nation, I am here today to tell you that we are long overdue in strengthening our nation's gun laws. Doing so must be a priority for Congress.

The organizations in the National Law Enforcement Partnership to Prevent Gun Violence are united in urgently calling on Congress to:

- Require background checks for *all* firearm purchasers;
- Ensure that prohibited purchaser records in the National Instant Criminal Background Check System (NICS), are up-to-date and accurate; and
- Limit high capacity ammunition feeding devices to ten rounds.

Seven of our nine groups, including the largest organizations among us, also support a ban on

assault weapons and Senator Feinstein's legislation.

Federal law prohibits dangerous individuals, such as convicted felons and those with mental health disqualifiers, from possessing firearms. While background checks are required for purchases through federally licensed gun dealers, no check is required for private sales, such as those through Internet postings, print ads or gun shows.

From November 2011 to November 2012, an estimated 6.6 million firearm transactions occurred without a background check. Up to 40 percent of firearm transactions occur through private individuals rather than licensed gun dealers. Allowing 40 percent of those acquiring guns to bypass background checks is like allowing 40 percent of airline passengers to board a plane without going through airport security.

Last October, in Brookfield, Wisconsin, seven women were shot by a prohibited purchaser who was under a domestic violence restraining order. The shooter answered an online ad and was able to buy a gun without a background check. Had the sale required a check, this tragedy could have been prevented.

Background checks work. They stopped nearly 2 million prohibited purchases between 1994 and 2009. We already have a national background check system in place. Therefore, extending background checks to *all* firearm purchasers can easily be implemented – and should be, without delay.

States can't do it alone. Interstate firearms trafficking is a serious problem that must be addressed federally. The problem is rampant: According to the ATF, in 2009, 30 percent of guns recovered at crime scenes had crossed state lines.

Submissions to NICS must be improved, especially mental health and drug abuse records. The 2007 massacre at Virginia Tech is a tragic example of a prohibited purchaser slipping between the cracks due to incomplete NICS records.

The ban on assault weapons and high-capacity ammunition magazines must be reinstated. Like assault weapons, high-capacity magazines are not used for hunting, do not belong in our homes and wreak havoc in our communities. Banning these magazines will reduce the number of bullets a shooter can use before having to reload. Reloading can provide a window of time in which to take down a shooter, as we saw in Tucson.

In 1998, four years after the assault weapons and high-capacity ammunition magazine ban was enacted, the percentage of firearms with large-capacity magazines recovered by Virginia police decreased and continued to drop until it hit a low of 9 percent in 2004, the year the ban expired. It hit a high of 20 percent in 2010, according to a Washington Post analysis.

After the 1994 law expired, 37 percent of police agencies saw increases in criminals' use of assault weapons, according to a 2010 PERF survey.

I have been in law enforcement for nearly 35 years, and have seen an explosion in firepower since the assault weapons ban expired. It is common to find many shell casings at crime scenes these days, as victims are being riddled with multiple gunshots.

The common-sense measures we are calling for will not infringe on Second Amendment rights,

but will ensure that we keep guns out of dangerous hands and excessive firepower out of our communities.

Generations of Americans, including our youngest ones, are depending on you to ensure they will grow up and fulfill their roles in the great human experience. None of us can fail them. I urge you to follow the will of the American public and stand with law enforcement to enact these common-sense public safety measures.

Thank you.

PREPARED STATEMENT OF GAYLE S. TROTTER

Testimony of Gayle S. Trotter
Senior Fellow, Independent Women's Forum
Partner and Co-Founder, Shafer & Trotter PLC

Before the United States Senate Committee on the Judiciary

"What Should America Do About Gun Violence?"

Washington, D.C.

January 30, 2013

★

Chairman Leahy, Ranking Member Grassley, and Members of the Committee, thank you for inviting me to appear before you today. We have seen unspeakable tragedy and now hear calls to action. This Committee has asked what America should do about gun violence.

Asking that question will undoubtedly invite impassioned debate in an area where reasonable and well-intentioned people can disagree on specific approaches. We all want a safer society. We differ on how to make our society safer and on whether some proposals, however appealing they may be, will actually increase public safety. And that is a key element of this debate. We need more than political philosophies to guide our discussion: We should consider the effectiveness of proposed changes. In a similar vein, President Obama said in his first inaugural address, "The question we ask today is not whether our government is too big or too small, but whether it works."

This Committee should ask the same question about proposed gun regulations: What works? We should decline to accept any call to action that will fail to make Americans safer and, in particular, harm women the most.

I would like to begin with the compelling story of Sarah McKinley. Home alone with her baby, she called 911 when two violent intruders began to break down her front door. The men wanted to force their way into her home so they could steal the prescription medication of her

deceased husband, who had recently died of cancer. Before the police could arrive, while Ms. McKinley was on the line with the 911 operator, these violent intruders broke down her door. One of the men brandished a foot-long hunting knife. As the intruders forced their way into her home, Ms. McKinley fired her weapon, fatally wounding one of the violent attackers and causing the other to flee the scene. Later, Ms. McKinley reflected on the incident: “It was either going to be him or my son,” she said. “And it wasn’t going to be my son.”

Guns make women safer. Most violent offenders actually do not use firearms, which makes guns the great equalizer. In fact, over 90 percent of violent crimes occur without a firearm. Over the most recent decade, from 2001 to 2010, “about 6 percent to 9 percent of all violent victimizations were committed with firearms,” according to a federal study.¹ Violent criminals rarely use a gun to threaten or attack women. Attackers use their size and physical strength, preying on women who are at a severe disadvantage.

Guns reverse that balance of power in a violent confrontation. Armed with a gun, a woman can even have the advantage over a violent attacker. How do guns give women the advantage? An armed woman does not need superior strength or the proximity of a hand-to-hand struggle. She can protect her children, elderly relatives, herself or others who are vulnerable to an assailant. Using a firearm with a magazine holding more than 10 rounds of ammunition, a woman would have a fighting chance even against multiple attackers. In the Appendix to my testimony, I have summarized news accounts selected from the last twelve months. Each of these accounts involves a woman who, like Sarah McKinley, used a firearm to protect herself or her loved ones against violent men.

¹ U.S. Department of Justice Bureau of Justice Statistics, “National Crime Victimization Survey” (Sept. 2011), at 8 (noting that “[d]uring the 10-year period, about 6% to 9% of all violent victimizations were committed with firearms” and that “[t]he percent of violent victimizations involving firearms has remained generally stable from 2004 to 2010”).

Concealed-carry laws reverse that balance of power even before a violent confrontation occurs. In this way, armed women indirectly benefit those who choose not to carry. For a would-be criminal, concealed-carry laws dramatically increase the cost of committing a crime, paying safety dividends to those who do not carry. All women in these jurisdictions reap the benefits of concealed-carry laws because potential assailants face a much higher risk when they attempt to threaten or harm a potential victim. As a result, in jurisdictions with concealed-carry laws, women are less likely to be raped, maimed or murdered than they are in states with stricter gun ownership laws.

Research has shown that states with nondiscretionary concealed handgun laws have 25 percent fewer rapes than states that restrict or forbid women from carrying concealed handguns.² The most thorough analysis of concealed-carry laws and crime rates indicates that “there are large drops in overall violent crime, murder, rape, and aggravated assault that begin right after the right-to-carry laws have gone into effect” and that “in all those crime categories, the crime rates consistently stay much lower than they were before the law.”³ Among the ten states that adopted concealed-carry laws over a fifteen-year span, there were 0.89 shooting deaths and injuries per 100,000 people, representing less than half the rate of 2.09 per 100,000 experienced in states without these laws.⁴

Armed security works. Brave men and women stand guard over Capitol Hill, including the building where we are now. Snipers stand guard on the White House roof. Politicians and other high-profile individuals, including prominent gun-control advocates, have admitted to having gun permits either currently or in the past.

² See John R. Lott, Jr., *MORE GUNS, LESS CRIME* 46 (3d ed. 2010).

³ *Id.*

⁴ *Id.* at 100-01.

Armed guards often serve in the employ of those who themselves advocate for more restrictions on gun rights. Political figures seek to restrict gun rights, and Hollywood celebrities somberly urge Americans to “demand a plan” to reduce gun violence despite their own roles in graphically depicting lethal violence on the screen. In both cases, however, many of these political figures and celebrities already have their own plan: They rely on guns to safeguard their own personal safety. For example, armed guards protected a suburban newspaper in New York after the newspaper published the names and residential addresses of gun permit holders, and the newspaper’s own reporter already used a gun for his protection. After publishing the story, the editors disclosed that their reporter owns a Smith & Wesson .357 Magnum and has “a residence permit in New York City.”

While armed security works, gun bans do not. Anti-gun legislation keeps guns away from the sane and the law-abiding — but it does not keep guns out of the hands of criminals. Nearly all mass shootings have occurred in “gun-free” zones. Law-abiding citizens do not bring firearms to gun-free zones, so psychotic killers know they can inflict more harm in these unprotected environments. These laws make easy targets of the sane and the law-abiding. Gun-control advocates cheer the creation of legally mandated gun-free zones, touting increased safety while actually making citizens in those locations more vulnerable to the next horrible monster in search of soft targets. A moment’s reflection confirms that statutory provisions and bold signs do not create a gun-free environment. No sober-minded person would advocate that approach when protecting banks, airports, rock concerts and government buildings. Instead, publicly designated gun-free zones have the effect of creating high-visibility soft targets — conspicuous environments where madmen can wreak havoc.

We need sensible enforcement of the gun laws that are already on the books. Currently, we have more than 20,000 under-enforced or selectively enforced gun laws. Gun regulation affects only the guns of the law-abiding. Criminals will not be bound by such gestures, especially as we continually fail to prosecute serious gun violations or provide meaningful and consistent penalties for violent felonies involving firearms.

Recently, a talk show host inadvertently exposed the absurdity of gun regulation in the District of Columbia when he displayed a 30-round magazine on national television, thereby embroiling himself in a police investigation. Ultimately, the Attorney General of the District of Columbia decided not to prosecute the matter. “Despite the clarity of the violation of this important law,” he concluded, “a prosecution would not promote public safety.”⁵ Why is it permissible to possess magazines to persuade people that guns are dangerous, but not for a woman to possess one to defend herself against gang rape? Overbroad anti-gun regulations unduly increase prosecutorial discretion and result in selective enforcement of the law. Equal justice under law should not depend on whether a prosecutor has a political or ideological motivation to seek enforcement. Nor should justice depend on whether a prosecutor has the good sense to decline enforcement of a knowing violation that does nothing more than unwittingly demonstrate the law’s absurdity and overbreadth.

In lieu of empty, self-defeating gestures, we should address gun violence by doing what works. By safeguarding our Second Amendment rights, we preserve meaningful protection for women. Our nation made significant progress in that regard when, in recent memory, the United

⁵ Letter from Irvin B. Nathan, Attorney General for the District of Columbia, to Lee Levine (Jan. 11, 2013), at 2.

States Supreme Court held that the Second Amendment protects an individual's right to possess a firearm for traditionally lawful purposes, such as self-defense within the home.⁶

For those who believe in safeguarding the civil liberties enshrined in our Bill of Rights, you might consider this an unremarkable conclusion. The constitutional text expressly guarantees the right “to keep and bear Arms,” and that right is specifically enumerated — not implied — and guaranteed to “the people.” In other words, unlike many of the individual rights that the Supreme Court has recognized — some would say invented — you can actually find the right to bear arms in the literal text of the Second Amendment. Moreover, the Constitution guarantees a “right of the people” only two other times, both of which clearly describe individual rights: The First Amendment protects the “right of the people” to assemble and to petition the government, and the Fourth Amendment protects the “right of the people” against “unreasonable searches and seizures.”

Even so, dissenting liberals decried “the Court’s announcement of a new constitutional right to own and use firearms for private purposes.”⁷ Ironically, this claim originated from those who agree with the judicial philosophy that has discovered new fundamental individual rights hiding within “penumbras” that are “formed by emanations” from “specific guarantees in the Bill of Rights.” Adherents to this view maintain that the Bill of Rights generates “penumbral emanations” that create assorted individual rights. However, they simultaneously claim that enforcing an individual right expressly written in the black letter of the constitutional text is the “announcement of a new constitutional right.” One the one hand, shadowy secretions reveal the

⁶ *District of Columbia v. Heller*, 554 U.S. 570 (2008) (holding that the Second Amendment guarantees an individual right to possess a firearm unconnected with service in a militia and to use that arm for traditionally lawful purposes, such as self-defense within the home); *McDonald v. City of Chicago*, 561 U.S. 3025 (2010) (holding that the Second Amendment applies to the states as well as the federal government).

⁷ *Heller*, 554 U.S. at 681 (Stevens, J., dissenting).

hidden meaning of rights secretly embedded in the Constitution and awaiting judicial divination. On the other hand, they view a specifically enumerated guarantee in the Bill of Rights as “a new constitutional right.”

Moreover, the dissenting justices claimed that a local law could ban private possession of any form of operable firearm because “the adjacent states do permit the use of handguns for target practice, and those states are only a brief subway ride away.”⁸ They called this a “minimal burden” on the Second Amendment right to bear arms,⁹ as if a law-abiding citizen who is facing down an attacker might somehow have the ability to coax him onto the subway and take a brief ride to the adjoining jurisdiction’s nearest target range. Adherents of this judicial philosophy — which purports to allow the restriction of individual liberties as long as “a brief subway ride” would transport an aggrieved citizen to another jurisdiction where the penumbral emanations flow freely — would assuredly provide more robust protection for rights of their own judicial invention.

These are two dramatically different views of our Bill of Rights. One approach has repeatedly created new rights found nowhere in the Constitution while unflinchingly limiting the Second Amendment’s “right of the people to keep and bear Arms” to protect only the right to have a gun in the army, as peculiar as that would be. The other approach, which has twice prevailed in the Supreme Court, takes seriously the people’s enumerated rights — the ones actually written in the Constitution — and respects the Second Amendment.

In lieu of empty gestures, we should address gun violence based on what works. Guns make women safer. The Supreme Court has recognized that lawful self-defense is a central

⁸ *Id.* at 712 (Breyer, J., dissenting) (citing the online Metrorail System Map of the Washington Metropolitan Area Transit Authority).

⁹ *Id.* (Breyer, J., dissenting).

component of the Second Amendment's guarantee of the right to keep and bear arms. For women, the ability to arm ourselves for our protection is even more consequential than for men because guns are the great equalizer in a violent confrontation. As a result, we preserve meaningful protection for women by safeguarding our Second Amendment rights. Every woman deserves a fighting chance.

Thank you. It has been a pleasure to be here with you this morning to discuss these issues of such paramount importance to the safety of our citizens. I welcome any questions you may have.

Appendix

Selected News Accounts of Women Using Firearms
for Protection Against Violent Men*

Indianapolis, Ind. — A woman used her firearm to stop an intruder who had forced himself into the woman's home and fired a shot. The woman fired several shots at the violent attacker, who fled.¹

Oklahoma City, Okla. — A woman defended herself from five burglars attempting to break into her home. She shot one of the intruders, causing the others to flee the scene.²

Casper, Wyo. — A woman working as a hotel clerk used her gun to thwart a robbery. After two men with covered faces approached her to rob the hotel, the woman brandished a gun from her lunchbox, and the would-be robbers fled.³

Loganville, Ga. — A woman hiding in her attic with her children shot a violent intruder and fled to safety. The woman was working at home, saw a man outside her window and took her nine-year-old twins to a crawlspace before the man broke into the home using a crowbar.⁴

Abilene, Tex. — A woman's estranged ex-boyfriend twice attempted to break into her home on Christmas night. After succeeding, he assaulted her while her 16-year-old and newborn child were present. The woman retrieved her firearm and shot the violent intruder.⁵

San Antonio, Tex. — A woman working security in a movie theater shot a gunman who had chased restaurant patrons into the theater's lobby and began shooting, preventing the violent attacker from entering the theater.⁶

Casper, Wyo. — A woman receiving a manicure in a nail salon retrieved a firearm from her purse after a man entered the salon and wielded a pistol. Seeing the woman's weapon, the menacing gunman left.⁷

* This Appendix summarizes selected news accounts, primarily from the last twelve months, involving women who used a firearm to protect themselves and their children against violent attackers or intruders. Many similar stories are aggregated online, such as those available at <http://bit.ly/WifldJ>.

¹ "Resident Fires Back at Intruder" (Jan. 22, 2013), available at <http://bit.ly/XAe6DS>.

² "Burglars Shot in Southeast Oklahoma City" (Jan. 18, 2013), available at <http://bit.ly/VGu1mz>.

³ "Casper Hotel Worker Uses Lunchbox Gun to Thwart Robbery" (Jan. 4, 2013), available at <http://bit.ly/TPbz9H>.

⁴ "Woman Hiding With Kids Shoots Intruder" (Jan. 4, 2013), available at <http://bit.ly/134dM6d>.

⁵ "Abilene Woman Shot and Killed Estranged Ex-Boyfriend" (Dec. 26, 2012), available at <http://bit.ly/TnvrBO>.

⁶ "Terror at Southwest Side Movie Theater" (Dec. 17, 2012), available at <http://bit.ly/12jVMV9>.

⁷ "Nail Salon Customer Packs Heat, Gunman Leaves" (Dec. 11, 2012), available at <http://bit.ly/W5iZG1>.

Atlanta, Ga. — A 77-year-old grandmother used a firearm to defend her home from an intruder trying to gain entry after throwing a brick through her bedroom window. The woman shot twice, and the intruder fled.⁸

Columbia, S.C. — A woman working as a store clerk used her firearm to defend herself from three armed men who attempted to rob the store, demanding money and lottery tickets and shooting into the air. The woman shot one of the violent attackers, and the others fled.⁹

Alcalde, N.M. — A man followed a woman home from a gas station and knocked on her door. While speaking with him at the door, he forced his way into her home, picked up a knife from her kitchen table, put the knife to her chin and ordered her to undress. As he continued to assault her, the woman used a firearm in her home to shoot the violent intruder.¹⁰

Bryan County, Okla. — A 12-year-old girl was home alone when a man rang the doorbell, went around to the back door and kicked it open. She called her mother, who told her to get the family gun, hide in a closet and call 911. As the mother raced home, the intruder began opening the door to the closet where the girl was hiding. The girl shot the intruder, who immediately fled the house before police caught him.¹¹

Blooming Grove, Wis. — A woman heard a robber's footsteps in her home in the middle of the night. As she was dialing 911, the intruder assaulted her with pepper spray. She fired at the man, who fled.¹²

St. Paul, Minn. — A woman walked into her home, where her 34-year-old daughter was asleep at the time, to find a man stealing money from her purse. The burglar struggled with the woman until the daughter entered the room, armed with a handgun. Using the weapon, the women held the man in custody until police arrived.¹³

Athens, Ohio — A 68-year-old woman looked in her driveway at 8 p.m. to see why her dogs were barking. As she rounded her vehicle, a man in a ski mask hit her in the head, knocked her to the ground and kicked her in the stomach. Pulling a handgun from her pocket, the woman fired at the violent attacker, who fled.¹⁴

⁸ "Woman, 77, Shoots at Would-Be Burglar" (Dec. 6, 2012), available at <http://bit.ly/11Zj2W>.

⁹ "Store Clerk Fears for Her Life, Shoots Robbery Suspect" (Nov. 14, 2012), available at <http://bit.ly/Tp4sTt>.

¹⁰ "Alcalde Woman In Fatal Shooting Tells Deputies Stranger Barged In, Assaulted Her" (Nov. 7, 2012), available at <http://bit.ly/Uv2Efa>.

¹¹ "Twelve-Year-Old Girl Shoots Intruder During Home Invasion" (Oct. 18, 2012), available at <http://bit.ly/Xvbrh3>.

¹² "Woman Says Shooting at Home Intruder Saved Her Life" (Sept. 22, 2012), available at <http://bit.ly/UsmoAJ>.

¹³ "Mom, Daughter Hold Burglar for Police with Pink Gun" (Sept. 19, 2012), available at <http://bit.ly/Rvzf42>.

¹⁴ "Rhoric Road Woman Uses Gun to Fend Off Attacker" (Sept. 13, 2012), available at <http://bit.ly/RMJNvW>.

Gaffney, S.C. — A woman, home alone with her toddler, hid in her bedroom when she heard an intruder kick in her front door. When the 200-pound man kicked in the woman's bedroom door, she shot at the intruder, who fled.¹⁵

Detroit, Mich. — As a woman walked out of a store, two carjackers confronted her and shot at her in an attempt to rob her and steal her sport utility vehicle. Although wounded, she used her handgun to return fire, causing the violent attackers to flee.¹⁶

Fresno County, Calif. — A woman and her two-year old daughter heard a man breaking into her home. The man robbed the woman and tried to kidnap her child. The woman, armed with a shotgun, demanded that the man leave her daughter. The intruder released the child and fled.¹⁷

Dora, Ala. — A woman called 911 and woke her daughters after hearing the loud crash of an intruder kicking in her front door. Ignoring several warnings, the 25-year-old intruder continued upstairs toward the woman, who shot the man, immobilizing him. "There's so much talk about banning guns and gun control, but they're for protection," she said. "There's no way I could have fought him off."¹⁸

Blanchard, Okla. — A woman, home alone with her baby, called 911 when two violent intruders attempted to break down her front door. The men wanted to steal medication prescribed to her husband, who had just died of cancer. Before police could arrive, the intruders broke down the door. The woman shot one of the men, brandishing a foot-long hunting knife, and the other fled. "It was either going to be him or my son," she said. "And it wasn't going to be my son."¹⁹

Gwinnett County, Ga. — A woman getting out of the shower faced a strange man attacking her with a kitchen knife. The attacker, who had stalked her for several days before, forced the woman into her bedroom. Telling him she had money there, she reached her handgun and shot the violent attacker, who ran out of a back door and collapsed in the yard.²⁰

Blountville, Tenn. — A woman serving as the resource officer at Sullivan Central High School stopped a violent attacker as he pointed a gun at the principal's head. The woman drew her own gun, pushed the principal to safety and kept the attacker at bay until police arrived, when they shot and killed the violent attacker during a standoff.²¹

¹⁵ "Woman Protecting Toddler Fires Shots at Intruder" (Sept. 7, 2012), available at <http://bit.ly/UawOmQ>.

¹⁶ "Detroit Woman Shoots Back At Would-Be Carjackers" (Aug. 27, 2012), available at <http://bit.ly/OqzSdd>.

¹⁷ "Fresno County Woman Stops Kidnapping By Pulling Gun on Home Intruder" (Aug. 28, 2012), available at <http://bit.ly/SO7eNp>.

¹⁸ "Woman Forced to Shoot Intruder to Protect Herself and Children" (Aug. 16, 2012), available at <http://bit.ly/Q4ItxX>.

¹⁹ "Blanchard Mother Who Shot, Killed Intruder Recalls Home Invasion Terror" (Jan. 1, 2012), available at <http://bit.ly/sGedTr>.

²⁰ "Woman Shot Intruder Nine Times in Self Defense" (May 11, 2011), available at <http://bit.ly/HwqfGe>.

²¹ "Police Officers Kill Gunman at Sullivan Central" (Aug. 30, 2010), available at <http://bit.ly/aCuFSI>.

PREPARED STATEMENT OF WAYNE LAPIERRE

TESTIMONY OF WAYNE LAPIERRE
EXECUTIVE VICE PRESIDENT, NATIONAL RIFLE ASSOCIATION OF AMERICA
BEFORE THE U.S. SENATE COMMITTEE ON THE JUDICIARY
HEARING ON "WHAT SHOULD AMERICA DO ABOUT GUN VIOLENCE?"
216 HART SENATE OFFICE BUILDING
JANUARY 30, 2013

Mr. Chairman and Members of the Committee:

It's an honor to be here today on behalf of more than 4.5 million moms and dads and sons and daughters, in every state across our nation, who make up the National Rifle Association of America. Those 4.5 million active members are joined by tens of millions of NRA supporters.

And it's on behalf of those millions of decent, hardworking, law-abiding citizens ... to give voice to their concerns ... that I'm here today.

The title of today's hearing is "What should America do about gun violence?"

We believe the answer to that question is to be honest about what works -- and what doesn't work.

Teaching safe and responsible gun ownership works -- and the NRA has a long and proud history of teaching it.

Our "Eddie Eagle" children's safety program has taught over 25 million young children that if they see a gun, they should do four things: "Stop. Don't touch. Leave the area. Tell an adult." As a result of this and other private sector programs, fatal firearm accidents are at the lowest levels in more than 100 years.¹

¹ Pre-1981 data from National Safety Council, *Accident Facts* (annual); 1981 forward from Centers for Disease Control and Prevention, *available at* http://www.cdc.gov/injury/wisqars/fatal_injury_reports.html.

The NRA has over 80,000 certified instructors who teach our military personnel, law enforcement officers and hundreds of thousands of other American men and women how to safely use firearms. We do more – and spend more – than anyone else on teaching safe and responsible gun ownership.

We joined the nation in sorrow over the tragedy that occurred in Newtown, Connecticut. There is nothing more precious than our children. We have no more sacred duty than to protect our children and keep them safe. That's why we asked former Congressman and Undersecretary of Homeland Security, Asa Hutchinson, to bring in every expert available to develop a model School Shield Program – one that can be individually tailored to make our schools as safe as possible.

It's time to throw an immediate blanket of security around our children. About a third of our schools have armed security already – because it works.² And that number is growing. Right now, state officials, local authorities and school districts in all 50 states are considering their own plans to protect children in their schools.

In addition, we need to enforce the thousands of gun laws that are currently on the books. Prosecuting criminals who misuse firearms works. Unfortunately, we've seen a dramatic collapse in federal gun prosecutions in recent years. Overall in 2011, federal weapons prosecutions per capita were down 35 percent from their peak in the previous administration.³ That means violent felons, gang members and the mentally ill who possess firearms are not being prosecuted. And that's unacceptable.

And out of more than 76,000 firearms purchases denied by the federal instant check system, only 62 were referred for prosecution and only 44 were actually prosecuted.⁴ Proposing more gun

² Gary Fields et al., *NRA Calls for Arms in School*, Wall Street Journal, Dec. 22, 2012, available at <http://online.wsj.com/article/SB10001424127887324461604578193364201364432.html>.

³ Calculated from U.S. Department of Justice data available through Transactional Records Access Clearinghouse, <http://tracfed.syr.edu>.

⁴ Ronald J. Frandsen, *Enforcement of the Brady Act, 2010: Federal and State Investigations and Prosecutions of Firearm Applicants Denied by a NICS Check in 2010*, available at <https://www.ncjrs.gov/pdffiles1/bis/grants/239272.pdf>.

control laws – while failing to enforce the thousands we already have – is not a serious solution to reducing crime.

I think we can also agree that our mental health system is broken. We need to look at the full range of mental health issues, from early detection and treatment, to civil commitment laws, to privacy laws that needlessly prevent mental health records from being included in the National Instant Criminal Background Check System.

While we're ready to participate in a meaningful effort to solve these pressing problems, we must respectfully – but honestly and firmly – disagree with some members of this committee, many in the media, and all of the gun control groups on what will keep our kids and our streets safe.

Law-abiding gun owners will not accept blame for the acts of violent or deranged criminals. Nor do we believe the government should dictate what we can lawfully own and use to protect our families.

As I said earlier, we need to be honest about what works and what does not work. Proposals that would only serve to burden the law-abiding have failed in the past and will fail in the future.

Semi-automatic firearms have been around for over 100 years. They are among the most popular guns made for hunting, target shooting and self-defense. Despite this fact, Congress banned the manufacture and sale of hundreds of semi-automatic firearms and magazines from 1994 to 2004. Independent studies, including a study from the Clinton Justice Department, proved that ban had no impact on lowering crime.⁵

And when it comes to the issue of background checks, let's be honest – background checks will never be "universal" – because criminals will never submit to them.

⁵ Jeffrey A. Roth & Christopher S. Koper, "Impact Evaluation of the Public Safety and Recreational Firearms Use Protection Act of 1994, (1997), available at http://www.sas.upenn.edu/jerrylee/research/aw_ban.htm.

But there are things that can be done and we ask you to join with us. The NRA is made up of millions of Americans who support what works ... the immediate protection for all – not just some – of our school children; swift, certain prosecution of criminals with guns; and fixing our broken mental health system.

We love our families and our country. We believe in our freedom. We're the millions of Americans from all walks of life who take responsibility for our own safety and protection as a God-given, fundamental right.

Mr. Chairman and members of the Committee, I thank you for your time and consideration.

PREPARED STATEMENT OF CHAIRMAN PATRICK J. LEAHY

**OPENING STATEMENT OF SENATOR PATRICK LEAHY (D-VT.),
CHAIRMAN, SENATE JUDICIARY COMMITTEE
HEARING ON:
“WHAT SHOULD AMERICA DO ABOUT GUN VIOLENCE?”
JANUARY 30, 2013**

On December 14, America’s heart was broken when 20 young children and six dedicated educators were murdered. This is the first Judiciary Committee hearing of the 113th Congress. I ask all assembled here today to join in the discussion as part of a collective effort to find solutions to help ensure that no family, no school, and no community ever has to endure such a grievous tragedy again.

We must come together today as Americans seeking common cause. Let us forego sloganeering, demagoguery and partisan recriminations. This is too important for all that. We all abhor the recent tragedies – in just the last two years – in an elementary school in Connecticut, in a movie theater in Colorado, in a sacred place of worship in Wisconsin, and in front of a shopping mall in Arizona.

Americans are looking to us for solutions and for action. This Committee is a focal point for that process. I have introduced a measure to provide law enforcement agencies with stronger tools against illegal gun trafficking. Others have proposed restrictions on military style weapons and the size of ammunition clips. Others have proposed modifications to the background check systems to keep guns out of the wrong hands, while not unnecessarily burdening law-abiding citizens.

I know gun store owners in Vermont. They follow the law and conduct background checks to block the conveyance of guns to those who should not have them. They wonder why others who sell guns do not have to follow these same protective rules. I agree with these responsible business owners. If we can all agree that criminals and those adjudicated as mentally ill should not buy firearms, why should we not try to plug the loopholes in the law that allow them to buy guns without background checks? It is a simple matter of common sense. And if we agree that the background check system is worthwhile, should we not try to improve its content and use so it can be more effective? What responsible gun owner objects to improving the background check system?

At the outset of this hearing, I note that the Second Amendment is secure and will remain secure and protected. In two recent cases, the Supreme Court has confirmed that the Second Amendment, like other aspects of our Bill of Rights, secures a fundamental individual right. Americans have the right to self-defense and to have guns in their homes to protect their families. No one can or will take those rights or our guns away. Second Amendment rights are the foundation on which our discussion rests. They are not at risk. But *lives* are at risk when responsible people fail to stand up for laws that will keep guns out of the hands of those who will use them to commit mass murder. I ask that we focus our discussion on additional statutory measures to better to protect our children and all Americans. Ours is a free society, an open society. We come together today to consider how to become a safer and more secure society.

No one begrudges the government assistance provided to victims of mass tragedies made possible by the law we passed after the bombing at Oklahoma City. The bill I introduced last week against gun trafficking will similarly prove helpful and become an accepted part of our crime control framework. It, too, is a commonsense reform. It fills a hole in our law enforcement arsenal so that straw purchasers who acquire weapons for criminals can be prosecuted more effectively.

Last Thursday the President nominated the U.S. Attorney from Minnesota to direct the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives. I trust that all Senators will cooperate in a prompt hearing and action on that nomination and will join in good faith to strengthen our law enforcement efforts against gun violence and to protect public safety.

As a responsible gun owner and someone who cherishes all of our constitutional rights; as a Senator who has sworn an oath to uphold those rights, and as a father and grandfather; and as a former prosecutor who has seen the results of gun violence first hand, I undertake these efforts with hope that this hearing can build consensus around commonsense solutions. Previous measures to close the gun show loophole or to improve the background check system have been bipartisan. I hope in this new Congress, further improvements will also become bipartisan. I have said what kinds of measures I can support. I challenge other Senators to come forward and do so, as well. I will ask our witnesses what legislative proposals they support to make America safer, and I thank everyone for joining today's discussion.

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PREPARED STATEMENT OF SENATOR TED CRUZ



Sen. Ted Cruz
Opening Statement – “What Should America Do About Gun Violence?”
Senate Judiciary Committee, January 30, 2013

This country was rightfully shocked by the tragedy at Sandy Hook Elementary on December 14, 2012. Every parent was understandably horrified by the senseless murder of 20 children and 6 adults that day in Newtown, Connecticut.

We are now appropriately engaged in a national discussion about mental illness and how state and local governments can prevent future tragedies. But politicians should not be exploiting the tragic murder of children as an excuse to push an extreme anti-gun agenda.

Gun control would not have stopped the massacre of the 26 innocent Americans at Newtown. But it would restrict the constitutional rights of every American. We cannot outlaw evil, but we can remain vigilant in working to deter and punish violent criminals. And we should vigorously defend the constitutional right of law-abiding citizens to arm and protect themselves and others from deadly attacks.

Study after study has shown that strict gun control does not reduce violence. When DC banned handguns, homicides went up. When Chicago banned handguns, homicides went up. When Australia banned guns, violent crime went up. And after Great Britain banned guns, its violent crime rate was more than four-times higher than the rate in the United States.

We should not pass legislation that the evidence has proven is utterly ineffective. In particular, the Department of Justice has already concluded that the so-called “assault weapons ban,” when it was in effect, had no impact on reducing crime. This is unsurprising, because real assault weapons—machine guns—have been functionally illegal since 1934. All an “assault weapons ban” would do is restrict cosmetic features of firearms, in effect, banning “scary-looking guns.” Instead of passing ineffective show legislation—sound and fury, signifying nothing—we should be acting to deter and punish violent criminals and to prevent those with dangerous mental illness from illegally acquiring firearms.

There is wide agreement that guns should not be in the hands of the mentally ill. Current law seeks to identify those individuals, but it relies on states submitting relevant medical records. Not all states are doing this. We should make sure current state law is enforced and work with states to help them get past the challenges that prevent them from providing more robust data. This is an area of bipartisan agreement and a direct way to address the real problem of the mentally ill getting guns.

I look forward to our discussion today and to future hearings that will address the best strategies for preventing violent crimes and preserving the constitutional rights of every American.

PREPARED STATEMENT OF SENATOR ORRIN G. HATCH

WHAT SHOULD AMERICA DO ABOUT GUN VIOLENCE?**SENATOR ORRIN G. HATCH****SENATE JUDICIARY COMMITTEE****JANUARY 30, 2013**

The recent mass shootings in this country have left us heartbroken and searching for answers. There has been a call to act by the Obama Administration, Members of Congress and the American public to find legislative solutions to curb gun violence. If we are to deal with this very complex problem via legislative solution, any legislation must meet three criteria. First and foremost, the legislation must be consistent with honoring the Second Amendment. Secondly, we must provide policy that draws from past legislative experience. Thirdly, we must consider and address all possible contributing factors to identify the root causes of this problem. Any legislation that fails to meet all three criteria is destined to be ineffective and a disservice to victims and their family members.

To date, legislative efforts have been a single-minded approach to the problem, additional gun control measures to include banning so-called assault weapons, banning so-called high capacity magazines and heavier penalties for straw-purchasers.

Going forward, each of these legislative efforts will be individually analyzed to determine whether they are consistent with the principles of the Second Amendment. Any review of this legislation will include applying the principles discussed in recent decisions of the U.S. Supreme Court and debated by Members of Congress. Whether they comport with the Second Amendment remains to be seen. However, what is certain is that all of the current proposals fail to satisfy the second and third criteria.

All of these legislative efforts fail to recognize the lessons learned from past legislative experience in this area, the second necessary criteria for a successful solution. History has shown that gun control legislation has had little to no effect on stemming these types of incidents. A 10 year federal ban on assault weapons resulted in no discernible decrease in gun violence. Each and every one of the current proposals ignores the evidence and data that stricter gun control does not lead to a decrease in gun violence. The renewed efforts for stricter gun control are a waste of time, effort and resources as they have been proven ineffective.

In addition, these legislative actions fail to satisfy the third criteria, which is to consider and address all of the possible contributing factors to identify the root causes of this problem. Experts in the area of these types of shootings have identified common contributing causes, some of which include various issues with mental illness and treatment, violence in our culture through media, breakdown of the family unit, breakdowns in background checks for weapons purchases, response times of law enforcement, and the emergency action plans for schools. None of the identified contributing factors have been considered by the current proposals.

As we move forward, we must focus on a carefully considered, comprehensive approach that includes all of the factors discussed above. Anything less is a disservice to victims and their families.

MISCELLANEOUS SUBMISSIONS FOR THE RECORD



A Union of Professionals

Newtown: A Call for Ideas*(Submitted on Behalf of the American Federation of Teachers)*

We have a collective responsibility to ensure that our public schools are safe sanctuaries—both physically and emotionally—for every child, every educator and every community. That’s the first step in creating safe, nurturing, supportive learning environments where teachers can teach and kids can learn and grow.

Each of us was shaken to our core by the brutal massacre of innocent children and educators in Newtown, Conn. Two of the educators who were killed and one who was wounded are part of the AFT family. We grieve for them as we do for the entire Newtown community. Right now, as we still mourn, we have to help those in Newtown heal and we have to act. The instinct to protect, to serve and to love children is at the core of every educator and school employee. It is why educators need a critical voice in ensuring what happened in Newtown never occurs again.

Creating safe schools can’t be an empty promise. It will require a balanced approach that addresses both the physical and emotional safety of kids, educators and school employees—including comprehensive school safety programs and procedures, welcoming and supportive school environments, mental health supports and commonsense gun safety legislation.

School Safety Programs and Procedures

- Every state should have policies in place requiring individual school/building safety plans and districtwide safety plans. These plans serve as a guide to address all safety needs in the school, in areas such as lockdown procedures, chain of command, evacuations, personnel assignments in crisis situations, procedures for drills or practices, and reporting procedures.
- Every school should conduct regular audits or building walkthroughs to evaluate and analyze the effectiveness of their school safety and security plans.
- Audits should be designed and implemented by the entire school community, including administrators, parents, students, educators, school support staff and their unions. These same parties also should be given the chance to offer feedback before the results are publicly released.
- Appropriate state and local agencies need to devote more attention to ensuring that school communities and families are better informed about community- and school-level emergency preparedness protocols. This should include a special focus on the protocols for communication between the families of victims and the agencies responsible for incident management.
- Communication with and between students, school staff, parents, community and first responders is absolutely critical to every step and stage of safety planning and emergency preparedness. This holds true in planning and implementation of the plans as well as in the aftermath of tragedy.



- Schools should provide regular training for all school employees in their district's and school's emergency management systems and protocols to ensure that staff are able to protect and assist students during any crisis. All school staff also should receive regular training in violence prevention such as that required by New York state.
- As part of a school safety program, panic buttons or other methods of quickly contacting first responders should be available in classrooms.
- Our public schools should not be armed fortresses. Efforts to arm educators and increase guns in our schools put educators and students at risk and undermine our ability to provide a safe and nurturing learning environment for students.
- Whether to bring police officers into schools should be decided on a school-by-school basis; it should be the decision of the school community and must be part of a comprehensive school safety plan. Some schools, due to their remoteness or following horrendous tragedies such as the massacre in Newtown, may decide to have police at their individual schools. If a school decides to bring police into schools, they should be part of the fabric of the school community, not simply a stationed armed guard. School resource officers and programs like D.A.R.E. (Drug Abuse Resistance Education) provide rich learning experiences and opportunities for students in addition to being part of the school safety team.

Welcoming and Supportive School Environments

- When unspeakable tragedies do occur, we must provide immediate and ongoing physical and emotional support and assistance to students, parents, educators and school employees to help them grieve, heal and feel safe once again.
- Safe and respectful environments must be created for all students in our schools. Investing in ongoing schoolwide practices to reduce bullying behavior, increasing after-school activities, and integrating community services and programs like peer counseling, wellness programs and other social supports, are just a few examples of how communities like Baltimore and Cleveland have been able to reduce school-based violence. There are many other programs (such as Peace First) that can serve as models for how communities can reduce school-based violence. Noted researchers have asserted that this type of connectedness is a key element in fostering a sense of belonging and security in neighborhoods, particularly among marginalized students.
- Programs encouraging partnerships between schools, local law enforcement and appropriate community agencies (such as mental health) must be created to prevent and reduce school violence. The program would establish the creation of school-based safety committees composed of parents, educators, student and administrators. Law enforcement and other agencies should develop ongoing relationships with school safety committees and work jointly with them to help create safe and respectful environments, prevent and address violent incidents in schools, and serve as a resource on all safety issues for the faculty, staff and student body.

Mental Health Supports

- As a nation, we have a collective responsibility to help those who are suffering from mental health issues by making services more accessible. To do this, we need to reverse the recent

trend (documented below) of slashing funds for social workers and mental health services; we must let people know they are not on their own and help is available.

- States have cut at least \$4.35 billion in public mental health spending from 2009 to 2012, according to the National Association of State Mental Health Program Directors. In fiscal year 2012 alone, 31 states that provided information to the association reported cutting more than \$840 million. We must reverse this trend.
- We need to establish an appropriate ratio of students to counselors, psychologists and social workers in order to ensure that children get the diagnosis, support and help they need to reduce the incidence and risk of students feeling disaffected and isolated in their schools. Parents then have a responsibility to ensure their children participate in counseling or other services recommended by school or other mental health professionals.
- Community schools offer a vehicle for how schools can best deliver a wide range of coordinated services, including mental health services. This strategy puts in place a safety net to prevent students and families from falling through the cracks. At the crux of the community school strategy are coordinated, results-focused partnerships that include both public and private entities, to provide not only comprehensive educational and developmental services, but also access to mental health services for students and families, with the objectives of improving academic achievement, building school and community engagement, and improving the skills and well-being of the surrounding community residents.
- A concentrated and sustained public campaign to destigmatize mental health issues is needed. Effective prevention hinges on the networks of support available to students and members of their communities.

Commonsense Gun Safety Legislation

The AFT supports commonsense gun control legislation, including:

- Banning assault weapons and large-ammunition magazines, such as the bill introduced on Jan. 3 by Rep. Carolyn McCarthy (D-N.Y.);
- Requirements for thorough background checks;
- Ending the “gun show” loophole; and
- Ensuring gun owners keep their weapons secure while creating or increasing penalties for those who fail to do so.

We have witnessed the violent effects of gun violence for too long—both in our schools and in our neighborhoods. The tragic massacre at Sandy Hook Elementary must be a galvanizing moment to change this. We stand prepared to not only flesh out these ideas but work with you to create safe schools and communities for everyone in America.

**MICHIGAN STATE
UNIVERSITY**

January 28, 2013

The Honorable Patrick J. Leahy
The Honorable Charles Grassley
Chairman and Ranking Member
United States Senate Committee on
the Judiciary
Dirksen Senate Office Building 224
Washington, D.C. 20510

Dear Senators Leahy and Grassley,

I wanted to share the following information in anticipation of the Senate Judiciary Committee's hearing "What Should America Do About Gun Violence," scheduled for Wednesday, January 30, 2013.



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I am an assistant professor in the School of Criminal Justice at Michigan State University. My research examines public policy as a tool through which to reduce domestic violence and homicide. I recently presented some findings at a Johns Hopkins University Bloomberg School of Public Health summit on gun violence. I am attaching a copy of that paper, which I co-authored with Shannon Frattaroli.

I thought I might also highlight some of my key findings in this letter for you. I hope you will consider entering this letter and the attached paper in the hearing record.

Background on Domestic Violence and Guns

In 2010, at least 1,082 women and 267 men were killed by their intimate partners. Fifty-four percent of these victims were killed with guns. For at least the past 25 years, more intimate partner homicides have been committed with guns than all other weapons combined. The evidence is clear: when a woman is killed, it is most likely to be at the hands of an intimate partner with a gun.


Domestic violence involving a gun is more likely to result in homicide than domestic violence that involves a knife, other weapon, or bodily force. Indeed, the risk of homicide increases when a violent intimate has access to a gun, with one study estimating a five-fold increased risk.

Summary of Recent Studies and Findings on Reducing the Use of Guns in Domestic Violence and Intimate Partner Homicide

- State laws prohibiting those under domestic violence restraining orders from accessing guns are significantly associated with reductions in intimate partner homicide risk.
- These reductions rest on the capacity of states to support background checks on would-be gun purchasers.
- This finding highlights the importance of assuring that systems for implementing these laws are in place and supported: the prohibition against purchasing a gun can only be effective if background checks yield current, comprehensive, and accurate disqualifying information.
- States that effectively prohibited the purchase of a gun by a person with a domestic violence restraining order saw a reduction in total and gun intimate partner homicide rates of 10 to 12 percent.
- One analysis found that cities located in states with domestic violence restraining order gun prohibitions had 25 percent fewer intimate partner homicides committed with guns.
- The data also suggests that would-be killers do not replace guns with other weapons to affect the same number of killings.

I hope that the Committee will find this information useful and would be pleased to provide any assistance to you and your staff as you consider proposals aimed at reducing gun crime.

Yours sincerely,



April M. Zeoli

cc. Senator Richard Durbin
 Senator Dianne Feinstein
 Senator Amy Klobuchar
 Senator Charles Schumer

Law officers tell Congressman mental health issues more important than gun ban

radioiowa.com

Law officers who participated in a forum with Iowa Congressman Dave Loebsack Wednesday, were in agreement that addressing mental health concerns would be more effective than seeking to ban firearms when it comes to gun violence. The forum came in the wake of President Obama's announcement of proposals to curb gun violence. Appanoose County Sheriff, Gary Anderson, says his department runs up against several mental health issues when it comes to issuing gun permits.

"We have a difficult time having a records or background check on someone who may come in from a different state — Missouri for example since we border Missouri — be able to identify if that person has any mental health issues," Anderson says. Anderson says they are also restricted in handling people being treated for mental illness.

"If the psychiatrist or physiologist indicates that as long as that person is taking their medication they are stable, however if they get off their medication...they could become homicidal or suicidal, that is not a disqualifier if they have not previously indicated any harm to someone or themselves with a weapon," he explains.

Anderson says they can deny a weapons permit to someone who has been convicted of domestic assault, but that denial has to be in the sentencing guidelines given by the judge for them to carry it out. Muscatine County Sheriff Dave White is skeptical that a ban on assault rifles or large magazines of ammunition would solve the problem. He recently visited a gun show where the items were sold.

"Most of the AR-15 style weapons doubled in price, they are selling in the 1,500 to 2,000 dollar range now. The high-capacity magazines that were selling for 14 dollars are now selling for 40 dollars," White says. "And I don't believe that anybody that was there to purchase those items is buying them with the intent that if the administration bans possession of any assault weapons or high capacity magazines, that they are ever going to turn them in."

White says banning guns wouldn't keep them from the people who are going to use them for the wrong purpose. "We're just spinning our wheels, people are going to get guns. I mean, drugs have been illegal for years and people are still getting those. Murder is illegal and that doesn't seem to stop folks from going out and constantly killing people"

White says more could be done with the enforcement of the laws that are already on the books. "We see all the time where convicted felons that we arrest are given suspended sentences," White says. "These are absolutely the people that we do not want carrying weapons, and yet when we catch them with a weapon, basically there's nothing don to change that behavior. There's no fear of going back to prison or anything else because they are actually going to get a

suspended sentence until they actually use the weapon in a crime, and then it's just a little too late."

Davis County Sheriff Dave Davis echoed some of the earlier concerns about getting information in doing background checks. "We are not receiving the information that would be needed for us to do a proper background check on the mental status of individuals. It's kind of hard for us to know if somebody moves in here from the state of Florida if they've been under a doctor's care for mental issues in the past, and that's a huge concern of mine," Davis says.

Ottumwa Chief of Police Jim Clark says even when they identify mental health issues, then they face more obstacles. "We have a lot of mentally ill people who become criminally insane people. If we could get the mentally ill people treatment — that seems to be our issue here — we identify some that are mentally ill, they need treatment, but we can't access the system," Clark says, "there doesn't seem to be enough psychiatrists out here in rural Iowa."

Loebsack responded that "there aren't enough psychiatrists period." Dewitt Police Chief Dave Porter agreed that the lack of mental health services is an issue. "I think banning assault weapons and high capacity magazines is strictly a feel good measure, it's not going to accomplish anything. If I wanted to do something, I could have three 10-round magazines instead of one 30-round magazines and still fire off just about the same amount in the same amount of time," Porter says.

He pointed out that the Oklahoma City bomber killed people without guns and many people were killed when a man set fire to a nightclub in New York. Clinton Chief of Police Brian Guy says there are no drop-in clinics to take people who are mentally ill who pose a danger to the public.

"Even under an emergency committal basis, right now we are putting the cart before the horse. We will call to find out whether or not there is bed space available before an order is issued," according to Guy. "And that's certainly no way to provide a this critical service to the customers if you will, of the state."

Loebsack, a Democrat from Iowa City, says he has not had time to read over all the president's proposals on gun control yet and could not make any comments on them. Loebsack says this is the first in a series of meetings he will hold to gather input on gun control legislation and safety.

December 17, 2012, 7:04 p.m. ET

Guns, Mental Illness and Newtown

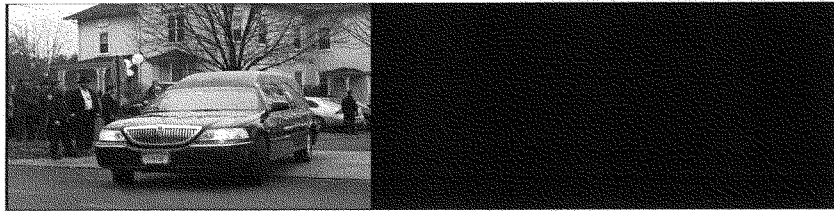
There were 18 random mass shootings in the 1980s, 54 in the 1990s, and 87 in the 2000s.

By [DAVID KOPEL](#)

Has the rate of random mass shootings in the United States increased? Over the past 30 years, the answer is definitely yes. It is also true that the total U.S. homicide rate has fallen by over half since 1980, and the gun homicide rate has fallen along with it. Today, Americans are safer from violent crime, including gun homicide, than they have been at any time since the mid-1960s.

Mass shootings, defined as four or more fatalities, fluctuate from year to year, but over the past 30 years there has been no long-term increase or decrease. But "random" mass shootings, such as the horrific crimes last Friday in Newtown, Conn., have increased.

Related Video



Editorial page editor Paul Gigot discusses the Newtown shooting and its political aftermath.

Alan Lankford of the University of Alabama analyzed data from a recent New York Police Department study of "active shooters"—criminals who attempted to murder people in a confined area, where there are lots of people, and who chose at least some victims randomly. Counting only the incidents with at least two casualties, there were 179 such crimes between 1966 and 2010. In the 1980s, there were 18. In the 1990s, there were 54. In the 2000s, there were 87.

If you count only such crimes in which five or more victims were killed, there were six in the 1980s and 19 in the 2000s.

Why the increase? It cannot be because gun-control laws have become more lax. Before the 1968 Gun Control Act, there were almost no federal gun-control laws. The exception was the National Firearms Act of 1934, which set up an extremely severe registration and tax system for automatic weapons and has remained in force for 78 years.

Nor are magazines holding more than 10 rounds something new. They were invented decades ago and have long been standard for many handguns. Police officers carry them

for the same reason that civilians do: Especially if a person is attacked by multiple assailants, there is no guarantee that a 10-round magazine will end the assault.

The 1980s were much worse than today in terms of overall violent crime, including gun homicide, but they were much better than today in terms of mass random shootings. The difference wasn't that the 1980s had tougher controls on so-called "assault weapons." No assault weapons law existed in the U.S. until California passed a ban in 1989.

Connecticut followed in 1993. None of the guns that the Newtown murderer used was an assault weapon under Connecticut law. This illustrates the uselessness of bans on so-called assault weapons, since those bans concentrate on guns' cosmetics, such as whether the gun has a bayonet lug, rather than their function.

What some people call "assault weapons" function like every other normal firearm—they fire only one bullet each time the trigger is pressed. Unlike automatics (machine guns), they do not fire continuously as long as the trigger is held. They are "semi-automatic" because they eject the empty shell case and load the next round into the firing chamber.

Today in America, most handguns are semi-automatics, as are many long guns, including the best-selling rifle today, the AR-15, the model used in the Newtown shooting. Some of these guns look like machine guns, but they do not function like machine guns.

Back in the mid-1960s, in most states, an adult could walk into a store and buy an AR-15 rifle, no questions asked. Today, firearms are the most heavily regulated consumer product in the United States. If someone wants to purchase an AR-15 or any other firearm, the store must first get permission for the sale from the FBI or its state counterpart. Permission is denied if the buyer is in one of nine categories of "prohibited persons," including felons, domestic-violence misdemeanants, and persons who have been adjudicated mentally ill or alcoholic.

Since gun controls today are far stricter than at the time when "active shooters" were rare, what can account for the increase in these shootings? One plausible answer is the media. Cable TV in the 1990s, and the Internet today, greatly magnify the instant celebrity that a mass killer can achieve. We know that many would-be mass killers obsessively study their predecessors.



AFP/Getty Images

State troopers leaving Sandy Hook Elementary School in Newtown, Conn., Dec. 14.

Loren Coleman's 2004 book "The Copycat Effect: How the Media and Popular Culture Trigger the Mayhem in Tomorrow's Headlines" shows that the copycat effect is as old as the media itself. Johann Wolfgang von Goethe's 1774 classic "The Sorrows of Young Werther" triggered a spate of copycat suicides all over Europe. But today the velocity and pervasiveness of the media make the problem much worse.

A second explanation is the deinstitutionalization of the violently mentally ill. A 2000 New York Times study of 100 rampage murderers found that 47 were mentally ill. In the Journal of the American Academy of Psychiatry Law (2008), Jason C. Matejkowski and his co-authors reported that 16% of state prisoners who had perpetrated murders were mentally ill.

In the mid-1960s, many of the killings would have been prevented because the severely mentally ill would have been confined and cared for in a state institution. But today, while government at most every level has bloated over the past half-century, mental-health treatment has been decimated. According to a study released in July by the Treatment Advocacy Center, the number of state hospital beds in America per capita has plummeted to 1850 levels, or 14.1 beds per 100,000 people.

Moreover, a 2011 paper by Steven P. Segal at the University of California, Berkeley, "Civil Commitment Law, Mental Health Services, and U.S. Homicide Rates," found that a third of the state-to-state variation in homicide rates was attributable to the strength or weakness of involuntary civil-commitment laws.

Finally, it must be acknowledged that many of these attacks today unfortunately take place in pretend "gun-free zones," such as schools, movie theaters and shopping malls. According to Ron Borsch's study for the Force Science Research Center at Minnesota State University-Mankato, active shooters are different from the gangsters and other street toughs whom a police officer might engage in a gunfight. They are predominantly weaklings and cowards who crumble easily as soon as an armed person shows up.

The problem is that by the time the police arrive, lots of people are already dead. So when armed citizens are on the scene, many lives are saved. The media rarely mention the mass murders that were thwarted by armed citizens at the Shoney's Restaurant in Anniston, Ala. (1991), the high school in Pearl, Miss. (1997), the middle-school dance in Edinboro, Penn. (1998), and the New Life Church in Colorado Springs, Colo. (2007), among others.

At the Clackamas Mall in Oregon last week, an active shooter murdered two people and then saw that a shopper, who had a handgun carry permit, had drawn a gun and was aiming at him. The murderer's next shot was to kill himself.

Real gun-free zones are a wonderful idea, but they are only real if they are created by metal detectors backed up by armed guards. Pretend gun-free zones, where law-abiding adults (who pass a fingerprint-based background check and a safety training class) are still disarmed, are magnets for evildoers who know they will be able to murder at will with little threat of being fired upon.

People who are serious about preventing the next Newtown should embrace much greater funding for mental health, strong laws for civil commitment of the violently mentally ill—and stop kidding themselves that pretend gun-free zones will stop killers.

Mr. Kopel is research director of the Independence Institute and co-author of the law school textbook, "Firearms Law and the Second Amendment" (Aspen, 2012).

A version of this article appeared December 17, 2012, on page A17 in the U.S. edition of The Wall Street Journal, with the headline: Guns, Mental Illness and Newtown.

Written Testimony for Chief Jim Bueermann (Ret.)
 President, Police Foundation, Washington, D.C.
 Senate Judiciary Committee Hearing
 on Gun-related Violence
 Wednesday, January 30, 2013

I write to you in my capacity as both President of the Police Foundation and the former Chief of Police of the Redlands, CA Police Department. The Police Foundation, established in 1970 by the Ford Foundation, is a non-partisan, non-constituency research organization. Our mission is to advance policing through innovation and scientific research. The Foundation is committed to disseminating science and evidence-based practices to the field. My written testimony reflects these principles and my personal experience after 33 years as a police officer during which time I witnessed countless acts of violence. I urge the passage of the Assault Weapons Ban Act of 2013 and ask Congress to consider funding additional scientific research to help this country implement evidence-based approaches to reducing gun violence in our communities and schools.

The most recent available data reveal this alarming picture of America's experience with gun-related violence: in 2011, of the 32,163 deaths from firearms, 19,766 were suicides and 11,101 were homicides.¹ Additionally, there were 467,321 non-fatal violent crimes committed with a firearm.² These numbers all reflect the unique position of the United States in relation to other high-income nations: our homicide rate is 6.9 times higher than the combined homicide rate of 22 other high-income countries.³ We all know that gun violence must be stemmed. The Police Foundation supports a comprehensive and holistic approach to preventing and reducing gun violence that includes:

- Legislation that bans assault weapons, requires universal background checks for all firearm purchases and limits high capacity ammunition feeding devices to ten rounds;
- Enhanced funding for research on the availability of firearms, the causes and prevention of gun violence and the connection between mental health and gun violence;
- Specific funding to replicate the 1996 US DOJ, National Institute of Justice study *Guns in America* that provided a comprehensive view of guns in our society;
- Increased funding to states for community-based mental health treatment; and,
- Sustained funding and support of the Justice and Mental Health Collaboration Program Act, which allows for collaborative efforts between law enforcement, criminal justice and mental health professionals.

Gun violence, especially violence that is mental health-related, is a complex social, cultural, health and safety issue. It is one that we do not know enough about. As the leader of a research organization that focuses on policing crime and disorder, I stress the need for scientific research and an evidence-based approach to understanding important societal issues. As a country, we

¹ Ibid.

² Bureau of Justice Statistics. Number of violent victimizations by weapons category. Generated using the NCVS Victimization Analysis Tool at www.bjs.gov. 29-Jan-13.

³ Richardson EG, Hemenway D. Homicide, suicide, and unintentional firearm mortality: comparing the United States with other high-income countries, 2003. *Journal of Trauma* 2011; 70:238-243.

need a robust and rigorous agenda on the causes of gun violence, effective, community-based prevention and intervention strategies and the link between mental illness and gun violence. Lifting the freeze on gun violence research at the Centers for Disease Control is heartening, and I hope Congress will support additional funding for interdisciplinary, scientific research and collaboration across government agencies, including the Department of Justice and the Department of Health and Human Services.

Mental health-related gun violence has been brought to the fore with the shootings in Newtown, CT, Aurora, CO and Tucson, AZ. While these tragic incidents are statistically rare, when combined with the number of gun-related suicides each year, the necessity of addressing the mental health needs of individuals, and the availability of firearms in our communities, is paramount.

We do not want to stigmatize individuals with mental illness nor solely focus the current dialogue on gun violence on the role of mental illness. The best available data on violence attributable to mental illness shows that 3-5% of violent acts are committed by individuals with mental illness⁴ and most of these acts do not involve guns.⁵ Yet, we cannot ignore the number of gun-involved suicides each year and the connection between mass shootings and mental illness. Increased scientific research across the fields of medicine, public health, criminal justice and law will help us understand how to prevent mental health-related gun violence. This requires both robust funding and time.

As a former chief of police, I recognize that local law enforcement agencies require immediate strategies to prevent another incident of mass violence. Earlier this month, the Police Foundation convened a roundtable meeting of expert researchers and practitioners from the fields of law enforcement, mental health, public health, criminal justice and policy. The group discussed how available interdisciplinary research might be used to develop practical strategies for law enforcement that prevent mental health-related gun violence. Existing research establishes the difficulty in predicting a violent act,⁶ but the group committed to three strategies that law enforcement can adopt now. Based on innovative practices defined in the literature, the group proposed that law enforcement executives:

- Create local partnerships with mental health service providers, school officials and appropriate community groups to develop a mental health crisis response capacity;
- Advocate for increased mental health services in their communities. Law enforcement executives should convene local service providers and community members to assess local mental health services and community needs and increase community members' knowledge of the existing science on mental health and gun violence;

⁴ Swanson JW: Mental disorder, substance abuse, and community violence: an epidemiological approach; in *Violence and Mental Disorder*. Edited by Monahan J, Steadman H. Chicago, University of Chicago Press, 1994. Cited in Appelbaum, PS and JW Swanson. Gun laws and mental illness: How sensible are current restrictions? *Psychiatric Services* 2010, 61: 652-654.

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⁶

- Adopt specific policies and practices that reduce the availability of guns to people in mental health crisis, institutionalize mental health training for their officers and facilitate community-wide “mental health first aid” training for all community members.

Clearly, more work needs to be done in this area so police departments can effectively operationalize these ideas. With additional Congressional support, strategies like these can be supported by legislation such as the Justice and Mental Health Collaboration Act or through an enhancement of programs at the Department of Justice and the Departments of Health and Human Services and Education. The JMHC Act has bipartisan support across the House of Representatives and Senate, and I ask that Congress sustain funding for these important ideas as part of a targeted approach to specifically reducing gun violence.

Charting a path to respond to gun violence will not be easy, but I encourage Congress to rely on the police, community leaders and science to guide that path. The Police Foundation, along with law enforcement leaders across the country, support reducing the availability of assault weapons and high capacity ammunition feeding device as a first step to reducing gun violence. However, to effectively reduce gun violence, there must be more comprehensive action. Congress should prioritize funding to better understand guns in America, research on the causes and prevention of gun violence and the connection between mental illness and gun violence. It should also enhance the funding and availability of mental health services in communities, and support programs that increase local collaboration between law enforcement, criminal justice and mental health professionals.

Thank you for your consideration of this written testimony.

**An Updated Assessment of the Federal Assault
Weapons Ban: Impacts on Gun Markets and
Gun Violence, 1994-2003**

**Report to the National Institute of Justice,
United States Department of Justice**

By

Christopher S. Koper
(Principal Investigator)

With

Daniel J. Woods and Jeffrey A. Roth

June 2004

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back down to 21,261 in 1994. Importation of all foreign LCMM rifles was ended by federal executive order in 1998.

ATF has reported that criminal use of LCMM rifles increased more quickly during the early 1990s than did that of other military-style rifles (U.S. Department of the Treasury, 1998, p. 33; also see Chapter 6). Accordingly, it is possible that the availability of LCMM rifles also helped to depress the prices of domestic ARs and discourage the production of legalized ARs during the 1990s, particularly if criminal users of rifles place a premium on the ability to accept LCMs. It is noteworthy, moreover, that the rebound in domestic production of legalized ARs came on the heels of the 1998 ban on LCMM rifles, perhaps suggesting the LCMM ban increased demand for domestic rifles accepting LCMs.

In sum, this examination of the AW ban's impact on gun prices and production suggests that there has likely been a sustained reduction in criminal use of APs since the ban but not necessarily ARs. Since most AWs used in crime are APs, this should result in an overall decline in AW use. In the following chapter, we examine the accuracy of this prediction.

Eliot W. Nelson, MD
February 5, 2013

Testimony for Submission to U.S. Senate Judiciary Committee

I deeply appreciate the opportunity to submit this statement of testimony to your Committee. I am a Professor of Pediatrics at the University of Vermont's College of Medicine, where I practice and teach primary care pediatrics. I have been privileged to serve with other pediatricians from throughout the country on the American Academy of Pediatrics Section and Council on Injury, Violence, and Poison Prevention. I serve voluntarily on Vermont's Child Fatality Review Team, and am fortunate to work with professionals from the Vermont Department of Health and from the Vermont Child Health Improvement Program. My interest in gun-violence prevention extends back to my years of pediatric training and teaching in Los Angeles in the 1980's. I am writing this as an individual citizen and pediatrician, and am not intending or presuming in any way to represent any organization or institution.

While the horrific shooting deaths of 20 children and 6 adults in Newtown's Shady Hook School have prompted a new level of public concern, firearm injury of all kinds has been a major focus of pediatric attention for many years because it consistently represents a leading cause of pediatric death. Over the past 20 years for which data are available (1991-2010), there have been 74,444 firearm deaths in children and youth under the age of twenty. After the first year of life, from ages 1-19 yrs, firearms were used in two thirds of all homicides (47,873/72,163), and in more than half of all youth suicides (21,211/39,510). For children these ages, almost one out of every seven children who died of *anything* died of a gunshot wound. Only about 7% of all pediatric firearm deaths were accidents; and most of these, like most of the homicides and suicides, occurred among teenagers aged 15 and older.¹

Pediatricians, trained to rely on preventive medicine strategies, have recognized that a broad-based *public health approach* offers the best opportunity to reduce this toll. The strength of the public health approach lies in its multi-faceted nature: interventions can involve human behavior, agents that cause harm, and the environment that allows or enables injuries to occur. They can take the form of education, engineering strategies, or the establishment and enforcement of rules or laws.

In the wake of a violent tragedy, most people (and the news media) initially focus on the human perpetrator in seeking to understand the cause of the problem. However, the experience of injury prevention experts has demonstrated repeatedly that human behavior is often the least amenable to control and change. Instead, the greatest gains historically in reducing the mortality and morbidity of injury have been achieved by targeting agents and the environment.

Consider Motor vehicle crash deaths (the leading cause of pediatric death after the first year): these have been enormously reduced by engineering safer roads and cars; by seat belts and air bags and child safety seats; and by passage and enforcement of laws that have reduced drunk driving (and have helped establish a cultural shift that makes drinking and driving less socially acceptable than it once was). Similarly, drowning deaths have been addressed partly by teaching children how to swim, but also by enforcing laws and regulations requiring four-sided fencing with self-latching gates around swimming

pools. House fire deaths have been reduced by construction regulations requiring smoke detectors, and by requiring the use of flame-retardant materials, rather than by only trying to teach children not to play with matches or to teach people not to smoke in bed. And poisoning deaths in young children have been reduced greatly since passage of the Poison Prevention Packaging Act of 1970.

Note please that while some of these measures have caused inconvenience or even restricted in some ways our freedom (we can't get drunk and drive or let our children play freely in the back of the station wagon), they still allow us great freedoms to drive and to enjoy swimming pools and even to smoke in our homes – they just make all of these activities safer. They reflect a consensus about balancing freedoms with both personal and public responsibility to safeguard people's lives.

Several years ago an 18 year-old patient of mine walked into a local gun shop, spent 20 minutes and \$400, and walked out with an AK-47 or equivalent. The dealer could not have known that he had a history of serious depression, or that he would be confronted by his parents who demanded that he return the weapon, or that he would subsequently spend a cold December night with it in his car, contemplating suicide. That gun shop is about 2 miles down the road from a K-8 elementary school.

This story had a "happy" ending – no shootings or deaths. Yet it has haunted me ever since – and I must ask every one of you leaders who may read this: ***should it have been so quick and easy for that young man to acquire such a lethal weapon?***

Anyone who pays attention to the grim news of firearm deaths in our small rural state knows that even Vermont is hardly immune to gun violence. Our rates of homicide (mostly domestic violence) and accidental shootings are low compared to national rates; but our firearm suicide rates are high, such that Vermont's overall firearm death rate is more than twice as high as that of Massachusetts, and similar to those of Illinois and California (data from the CDC, covering 1999-2010).¹

What might we do, and what might we ask our leaders in Congress to do, to help prevent the loss of so many lives in our country to gun violence?

Some have proposed placing armed guards at schools. Though I am aware of reports of successful use of a firearm in a school to disarm a potential shooter, I am also troubled that such an idea may be inspired by Hollywood-style fantasies. I wonder how many entrances in each school would need to be covered. And who can deny that bringing more armed individuals into schools might increase the risk of tragic mistakes, of misdirected fire? Even if one shooter is stopped, accidental shootings of innocent victims and bystanders would be a predictable consequence over time.

Waiting for an armed shooter to show up at a school, at which point he might then be successfully "taken out" by an armed guard, is a fine example of a REACTIVE way to prevent shootings. Public health experts seek PROACTIVE ways to achieve the same outcome – for example, by figuring out how we might prevent that shooter from getting his weapons in the first place.

The assertion that “the only way to stop a bad guy with a gun is a good guy with a gun” completely ignores the possibility of trying to prevent that “bad guy” from getting hold of the gun that he might use. It also glaringly overlooks the huge numbers of suicidal gun deaths that might similarly be prevented by making it harder to gain access to guns. (*please see more on suicide and guns below*)

It is estimated that there are close to 300 million guns owned by private citizens in our country, and that firearms exist in about one-third of all homes with children.^{2,3} Keeping guns out of the hands of unsupervised children who should not have them may require broad-based approaches. At the level of personal responsibility, and in homes with children, both private teaching by parents and public education campaigns should be supported in an effort to make it harder to get hold of firearms. Unsecured guns in homes can be stolen or misused or mistaken for toys – with lethal consequences. A sizeable body of evidence, cited in the American Academy of Pediatrics’ recent policy statement *Firearm-related Injuries Affecting the Pediatric Population*,⁴ shows that safe storage of them in homes with children can reduce the risk of both unintentional shootings and suicide.^{5,6} Safe storage laws, generally known as “Child Access Prevention” laws, are associated with reduced risk of suicide in teenagers.⁷ Such laws have been enacted in 27 states – but the provisions are very different from state to state. A national legislative standard could be helpful in defining the responsibilities of adult gun owners to store guns responsibly.

Nearly everyone seems to agree that we should keep guns away from potentially violent criminals and from those suffering from serious mental illnesses that could make them dangerous. While it is easy to say in the aftermath of shootings that “deranged” individuals are the problem, it can be much harder to predict which individuals will eventually become threatening or violent. What *is* clear is that in our country at this moment it is far too easy for such people to gain access to guns. And while guns indeed do not “kill people” by themselves, it is clear that guns too frequently intensify violence.

The need for strengthening of our system of background checks at the time of purchase or transfer of weapons should seem obvious. At a very minimum, such checks should apply to ALL sales and transfers of ownership of weapons outside of a family. Those checks should be able to identify individuals legally prohibited from gun purchase, including those who have been identified as potentially dangerous to themselves or others due to unstable mental illness. Unfortunately, at present the submission of names to the FBI database of potentially violent people with mental illness has been very inconsistent from state to state, making this a problem in urgent need of addressing (see recent article in the NY Times, Dec 21, 2012).

Of course, I know as a physician that most people with mental illness are NOT dangerous – and that we must take care to respect the privacy of our patients, in part to ensure that they will seek the care they need. Still, it can be daunting for primary care and mental health clinicians to try to assess the level of instability of any given patient. We do know that recent purchase of a handgun is associated with “a substantial increase in the risk of suicide” for the buyer.⁸ We also know that depression can be accompanied by anger and sometimes by vengeful thoughts. Research has increasingly shown that suicidal behavior is often impulsive, precipitated by short-term crises that lead to cognitive impairment and irrational despondency, culminating in a sudden urge to end life.⁹ In such cases, easy access to a gun

can be the major determinant that makes the behavior fatal – (and in extreme instances, that access to lethal weapons may contribute not only to mass shootings that end in suicide of the shooters, but also to countless instances of domestic homicide-suicide deaths). Importantly, a growing body of evidence demonstrates that suicidal impulses most often pass, such that the large majority of those who make serious suicide attempts but fail to kill themselves do NOT go on to die by suicide, even years later.⁹

In order to enhance the effectiveness of background checks, why not consider the advantages of the approach used in Canada, where two references are required to obtain a permit to buy a gun – AND where the spouse or domestic partner of the buyer is required to be notified of the application. Yes, such a practice would entail a bit more time to purchase a gun – there might even need to be a waiting period – but it would NOT prevent responsible citizens from owning firearms for hunting or sport-shooting or self-defense. Rather, it would make it possible for loved ones and friends to help keep gun ownership safer for all.

Regarding the proposed reinstatement of a ban on so-called “assault weapons,” it seems clear that even if this occurs there will still be huge numbers of these weapons in our midst. While it is hard for me to accept that such weapons have a legitimate purpose outside of the military or perhaps law-enforcement, I can understand that a ban on the sale of high-capacity magazines might achieve a significant reduction in the risk of mass shootings and might be more practical at present. At the same time, I believe we should examine the cultural environment that has led to the popularity of these weapons among sport-shooters. Perhaps we can find some common ground allowing us to recognize that limits on the ownership of such weapons can be reasonable. Perhaps we should consider that their lethality, in terms of rapid high-volume fire, might make further sales simply not worth the risk—just as we have accepted that the acquisition of fully automatic machine guns must be prohibited.

Finally, I must mention briefly that since 1996-97 serious study of the problem of gun violence in our country has incredibly been hampered by politically-engineered restrictions on funding for research on these injuries, their causes and prevention. The apparent fear was that findings from such research might yield evidence that could be used to promote “gun-control” efforts.¹⁰ I have witnessed the chilling effect of these restrictions even within the small boundaries of our Vermont Health Department, where injury prevention proposals have been put forward with deliberate avoidance of mention of firearms – for fear of having funding cut or denied. I hope that Congress truly did not intend to perpetuate ignorance in this way – but that has been the result, and I ask that you enact clear legislation to reverse this indefensible impediment to public health research.

Whatever steps you take, I implore you to bear in mind that right now our laws make it too easy for people who are unsafe to get and keep guns. Legislation by itself cannot solve the entire problem of firearm violence and injury in our country. Whatever laws you might pass will not prevent every episode of gun violence, any more than motor vehicle traffic laws can stop every car crash – yet those laws undoubtedly save lives every day. By helping to establish clear rules and norms that we can live with and trust, you can both save lives and shape a safer environment for our children and for all citizens.

Thank you very much,

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I am deeply indebted to Professor David Hemenway and his colleagues at the Harvard Injury Control Research Center, Harvard School of Public Health. Professor Hemenway's book Private Guns, Public Health has influenced much of my thinking on the prevention of gun violence and suicide

TESTIMONY OF JOSHUA HORWITZ
EXECUTIVE DIRECTOR, COALITION TO STOP GUN VIOLENCE
HEARING OF THE U.S. SENATE COMMITTEE ON THE JUDICIARY
“WHAT SHOULD AMERICA DO ABOUT GUN VIOLENCE?”
JANUARY 30, 2013

Mr. Chairman and Members of the Committee,

I greatly appreciate this opportunity to provide written testimony on behalf of the Coalition to Stop Gun Violence (CSGV), a coalition of more than 48 national organizations dedicated to reducing gun death and injury in the United States. We seek to secure freedom from gun violence through research, strategic engagement and effective policy advocacy.

As the committee considers the gun policy reform proposals recently put forward by the White House, I would like to take this opportunity to comment on several relevant and important issues:

Assault Weapons and High-Capacity Ammunition Magazines

The mass shooting tragedies of the past few years have highlighted the destructive power of assault weapons and high-capacity ammunition magazines in the hands of criminals and dangerous mentally ill individuals. From a macro-level analysis, there is evidence to suggest that attacks using semiautomatic firearms “tend to result in more shots fired, more persons wounded, and more wounds inflicted per victim than do attacks with other firearms” (Koper et al. 2013, 166-167). Semiautomatic assault rifles are not our Founding Fathers’ muskets or even your grandfather’s hunting rifle. They are designed with military-grade features such as pistol grips and detachable magazines; and for the sole purpose of killing quickly and en masse (Koper et al. 2013, 160).

Previous attempts to restrict assault weapons were simply not stringent enough to affect the supply of the weapons. The two-feature test that was the standard under the 1994 Assault Weapons Ban made it possible for the gun industry to manufacture “copycat rifles” that violated the spirit and intent of the law. Senator Feinstein’s inclusion of a one-feature test in the “Assault Weapons Ban of 2013” is a significant improvement in comparison to the 1994 law.

Nonetheless, Christopher Koper, an associate professor at George Mason University, has investigated the effectiveness of the 1994 Assault Weapons Ban and noted some positive results. His findings indicate the law’s provision banning high-capacity magazines had the greatest effect on decreasing gun crime (Koper et al. 2013, 168). This is supported by a *Washington Post* investigation in Richmond, Virginia that demonstrated the use of high-capacity ammunition magazines in gun crimes decreased from 18-20% in the early years of the ban to 10% by 2004—and then increased back to pre-ban levels by 2008 (Koper et al. 2013, 165).

After bearing witness to the mass shooting tragedies in Aurora, Colorado; Oak Creek, Wisconsin; and Newtown, Connecticut; the American people are showing increased support for meaningful reforms to reduce gun violence. A recent poll conducted by researchers at Johns

Hopkins University investigated how the public felt about specific gun violence prevention policy measures (Barry et al. 2013, 240). Their data showed overwhelming support for both banning assault weapons (69%) and the sale of high-capacity ammunition magazines (68%) (McGinty et al. 2013, 241).

Universal Background Checks and Gun Trafficking

Universal background checks represent another simple yet meaningful intervention that research indicates could reduce gun violence. In 1994, the Brady Act established the National Instant Background Check System (NICS) and mandated that all federally licensed firearm dealers perform a background check before selling a firearm. Since the NICS went into effect in 1998 there have been 161,836,595 checks performed and 996,558 federal denials (FBI 2013). This denial number does not include the hundreds of thousands of persons denied by the states that maintain their own databases for state prohibitions (known as point of contact states) (Bowling 2010, 2). Meanwhile, surveys estimate that 40% of firearm sales are made by private individuals, who are not required to conduct background checks under federal law (Wintemute 2013b, 96). These private transactions create an opportunity for criminals and other prohibited persons to purchase firearms without accountability or oversight (Cook and Ludwig 2013, 28).

Garen Wintemute, a professor at the University of California-Davis School of Medicine, has examined California state law, which not only mandates universal background checks on all gun sales, but also prohibits individuals who have violent misdemeanor convictions from purchasing a firearm (Cook and Ludwig 2013, 29; Wintemute 2013a, 85). He found evidence that universal background checks decrease the criminal acquisition of guns through private transactions in California (Wintemute 2013a, 85). Interestingly, Wintemute also found that these regulations have not harmed the gun industry in California (Wintemute 2013a, 90). Finally, Wintemute highlights that of the 927 persons who sought to purchase handguns in his study, “denial appears to reduce risk for new criminal activity among those persons who are denied [through a criminal background check]” (Wintemute 2013a, 85).

Ensuring that all firearm transactions include a background check would also make it easier for law enforcement to identify the original purchasers of firearms that are used in crimes, including straw purchasers and firearm traffickers (Wintemute 2013b, 104). According to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), “about 85% of criminal possessors [of firearms] were not the [original] retail purchaser” (Webster and Vernick et al. 2013, 110). By allowing ATF to accurately trace crime guns and prosecute corrupt firearms sellers, we can curtail the criminal acquisition of firearms (Barga and Gagliardi 2013, 150). Wintemute also investigated straw purchases at gun shows in California and in neighboring states and found that where universal background checks were not required, straw purchases “were six times as common” (Wintemute 2013b, 103).

Finally, universal background checks will only be successful if there are strong federal incentives for states to submit disqualifying records to the FBI’s NICS database. According to Mayors Against Illegal Guns, a total of ten states have yet to submit any disqualifying mental health records to NICS (Mayors Against Illegal Guns, 2013). This suggests that measures need to be taken to alleviate the barriers that make state compliance difficult.

Mental Illness and Gun Violence

Most Americans struggling with mental illness are not violent and never will become violent (Swanson et al. 2013, 36). However, the deluge of recent mass shootings perpetrated by mentally ill individuals beckons us to re-examine the current mental health standards for gun buyers. That said, when considering potential policies to prevent dangerous mentally ill individuals from gaining easy access to firearms, it is critical to address patient concerns about privacy and stigmatization with equal concern and vigilance (Swanson et al. 2013, 34).

The specific disqualifications related to mental health are quite narrow. Under federal law, an individual is prohibited from buying or possessing firearms if they have been "adjudicated as a mental defective" or "committed to a mental institution." A person is "adjudicated as a mental defective" if a court—or other entity having legal authority to make adjudications—has made a determination that an individual, as a result of mental illness: 1) Is a danger to himself or to others; 2) Lacks the mental capacity to contract or manage his own affairs, or; 3) Is found insane by a court in a criminal case, or incompetent to stand trial, or not guilty by reason of lack of mental responsibility pursuant to the Uniform Code of Military Justice. A person is "committed to a mental institution" if that person has been involuntarily committed to a mental institution by a court or other lawful authority. This expressly excludes voluntary commitment. If a person falls under one of these two categories, they are prohibited from purchasing and possessing firearms for life—although federal law now allows states to establish procedures for such individuals to restore their right to purchase or possess firearms.

The Health Insurance Portability and Accountability Act (HIPAA) of 1996 restricts what information about a patient's medical care can be disseminated to those not directly involved in that care. Mental health records *can*, however, be reported to NICS by state authorities in order to deny potential gun buyers at the point of purchase. As U.S. Secretary of Health and Human Services Kathleen Sebelius recently affirmed in an August 8, 2012 letter to Virginia Senator Mark Warner:

It is our understanding that in many states, the state court system or other parts of the state government that are not covered by HIPAA hold the mental health or other information DOJ seeks to have reported to the NICS database. In these cases, the HIPAA Privacy Rule does not affect reporting to the NICS database. However, the Privacy Rule would apply to the disclosure of mental health information held by a HIPAA covered entity. In these circumstances, the state can, though statute or regulation, require HIPAA covered entities to report the necessary information for NICS purposes, which would make the disclosure permissible under the HIPAA Privacy Rule.

Jeffrey Swanson, a professor at the Duke University School of Medicine and leading expert on the mental health aspects of gun violence prevention, examined the effectiveness of including individuals with a dangerous mental illness in a Connecticut state database used to screen gun buyers (Swanson et al. 2013, 33). Swanson looked specifically at individuals who were disqualified under federal law from buying firearms based on their mental health background, but who did *not* have a criminal record. The inclusion of their records in the Connecticut state database, Swanson found, resulted in a decreased risk of violent crime, particularly for first-time offenders (Swanson et al 2013, 45). Swanson noted, however, that without concurrent measures requiring universal background checks, dangerously mentally ill individuals will still be able to

purchase firearms from private party sellers without undergoing screening (Swanson et al. 2013 45).

Although the intersection between mental illness and violent crime is important, a greater population could be served through interventions to prevent suicidal individuals from purchasing firearms (Swanson et al. 2013, 49). According to the Centers for Disease Control and Prevention, suicides accounted for 61% of firearm fatalities in 2010; for a total of 19,392 deaths (Swanson 2013, 49). In particular, gun-related suicides are prominent in rural communities where firearms ownership is more prevalent (Miller et al. 2013, 5). Depression, however, is not a mental illness that will normally prohibit individuals from purchasing firearms (Swanson et al. 2013, 49). Furthermore, expanding federal law to preclude all individuals diagnosed with depression from buying guns would affect many non-violent patients and could deter some from seeking mental health care (Swanson 2013, 50).

With this in mind, there needs to be serious dialogue between mental health professionals and gun violence prevention experts concerning the mental health criteria that should be used to prohibit individuals from purchasing firearms. This dialogue should also consider which professionals are in the best position to identify and report dangerously mentally ill individuals to the NICS (Swanson 2013, 48).

Finally, when considering potential fixes to federal law, it is important to note that novel models for intervention have already been implemented at the state level (Swanson 2013, 48). Indiana, for example, prohibits access to guns based on a “dangerous individual” designation that does not depend on a previous involuntary commitment (Swanson 2013, 48). California prohibits the purchase and possession of firearms by individuals who have been voluntarily admitted to a psychiatric facility and are receiving inpatient treatment for a mental illness when an attending mental health professional states that the individual is a danger to self or others. Such state interventions could be considered as potential models for a new federal standard.

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January 28, 2013

The Honorable Dick Durbin
 Chair, Subcommittee on the Constitution, Civil Rights and Human Rights
 Senate Committee on the Judiciary
 United State Senate

Re: President Obama's Proposals to Reduce Gun Violence and the Second Amendment

Dear Senator Durbin,

The Law Center to Prevent Gun Violence ("the Law Center") writes to you regarding the January 30, 2013 hearing of the Senate Committee on the Judiciary, "What Should America Do About Gun Violence." The purpose of this letter is to assist the Committee in understanding how the Second Amendment has been interpreted by the courts, and to explain that the Second Amendment is not an obstacle to President Obama's proposals to reduce our nation's epidemic of gun violence.

The Law Center was formed by lawyers, originally as Legal Community Against Violence, in response to a horrific assault weapons massacre at a law firm at 101 California Street in San Francisco. The Law Center provides free assistance to state and local governments seeking to adopt or defend laws to reduce the more than 100,000 gun-related deaths and injuries that devastate American communities each year. We track Second Amendment challenges to such laws and regularly file amicus ("friend of the court") briefs in support of state and local governments nationwide. We strongly support the types of laws proposed by President Obama in the wake of the Newtown tragedy, including those requiring universal background checks on all gun buyers, banning military-style assault weapons and large capacity ammunition magazines and punishing gun traffickers.

The Supreme Court Has Held That the Second Amendment is Consistent with a Variety of Common Sense Gun Laws, Including Those Proposed by President Obama

In 2008, in *District of Columbia v. Heller*, the U.S. Supreme Court held for the first time that the Second Amendment protects the right of a law-abiding, responsible citizen to possess a handgun in the home for self-defense. The Court made very clear, however, that the right is not absolute, and does not protect the right to "keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." 554 U.S. 570, 626-27 (2008).

In addition, the Court identified several examples of gun laws it considered "presumptively lawful," including those prohibiting firearm possession by felons and the mentally ill, and laws regulating the commercial sale of guns. The Court also noted that the Second Amendment is consistent with laws banning "dangerous and unusual weapons," such as those most useful in military service.

Nothing in the *Heller* decision suggests that President Obama's proposals to reduce gun violence would violate the Second Amendment. On the contrary, the decision supports the constitutionality of those proposals because they are all presumptively lawful regulations as described by the Supreme Court. Assault weapons and large capacity ammunition magazines, for example, are "dangerous and unusual weapons" that are most useful in military service. Universal background checks, which typically require all firearm sales to be conducted by a licensed firearms dealer, are: 1) regulations on the commercial sale of firearms; and 2) necessary to enforce existing laws prohibiting firearm possession by felons and the mentally ill. Laws punishing gun traffickers (including "straw purchasers" who buy guns on behalf of prohibited persons) are also regulations on the commercial sale of firearms.

Even more fundamentally, the laws proposed by the President do not violate the Second Amendment because they in no way interfere with the narrow right established in *Heller*, i.e., the right of a law-abiding, responsible citizen to possess a handgun in the home for self-defense.

Lower Courts Interpreting *Heller* Have Overwhelmingly Rejected Challenges to Gun Laws and Upheld Bans on Assault Weapons and Large Capacity Ammunition Magazines

Although the *Heller* opinion opened the floodgates to lawsuits challenging federal, state and local gun laws, decisions of lower courts across the country have overwhelmingly rejected those challenges. The Law Center is aware of more than 650 such decisions.

Moreover, those courts that have specifically considered Second Amendment challenges to laws banning assault weapons and large capacity ammunition magazines have upheld the laws. In *Heller v. District of Columbia (Heller II)*, 670 F.3d 1244, 1262 the court rejected a Second Amendment challenge to Washington D.C.'s assault weapons and large capacity ammunition ban, finding that the ban did not substantially affect individuals' ability to defend themselves. In *People v. James*, 94 Cal. Rptr. 3d 576, 586 (Cal. Ct. App. 2009), the court upheld California's assault weapons ban, finding that it was consistent with the Second Amendment because assault weapons are "dangerous and unusual" weapons within the meaning of the Supreme Court's *Heller* decision.

The Second Amendment is Also Not an Obstacle to Laws Requiring Universal Background Checks or Punishing Gun Traffickers

Significantly, the Law Center is unaware of *any* challenges to federal, state or local laws requiring background checks. As noted previously, however, any such challenges would inevitably fail under *Heller* because: 1) background checks qualify as regulations on the commercial sale of firearms; 2) they are necessary to enforce laws prohibiting the possession of firearms by felons and the mentally ill; and 3) they in no way hamper the ability of a law-abiding, responsible citizen to possess a handgun in the home for self-defense.

We are also unaware of any challenges to laws criminalizing gun trafficking. Courts would certainly reject any such challenges because those laws, too, fail to interfere with the ability of a law-abiding, responsible person to possess a handgun in the home for self-defense.

In sum, those who would argue that the Second Amendment guarantees the right to possess assault weapons and large capacity magazines – like those used to slaughter first graders at Newtown, moviegoers at Aurora, teenagers at Columbine and lawyers at 101 California Street – cannot point to any precedent in the Supreme Court or lower courts to support their claims, and ignore precedents that clearly contradict their claims. Any assertions that laws requiring universal background checks and penalizing gun traffickers violate the Second Amendment are equally without legal support. Congress should rest assured that the common sense laws proposed by President Obama are – in addition to being vitally important to public safety and widely supported by the American public – constitutionally sound.

Please let me know if we can be of further assistance.

Very truly yours,

Juliet A. Leftwich
Legal Director



January 30, 2013

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
224 Dirksen Senate Office Building
U.S. Senate
Washington, D.C. 20510

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
135 Hart Senate Office Building
U.S. Senate
Washington, D.C. 20510

Chairman Leahy and Ranking Member Grassley:

In anticipation of the Senate Judiciary Committee's hearing today on gun violence, we write to submit our recommendations for Congressional action to reduce gun violence and to strongly urge you to advance common-sense firearms legislation that will help save lives. We hope you will enter this letter into the hearing's official record.

Together we serve as co-chairs of Mayors Against Illegal Guns, a bipartisan coalition of more than 850 mayors from across the country who are committed to keeping guns out of the wrong hands. Among our bipartisan ranks are Republicans, Democrats, and Independents who are charged with protecting small towns and big cities alike.

While we all come from a variety of backgrounds, we have united around the common goal of closing deadly gaps in our gun laws and ensuring that law enforcement agencies have the tools they need to keep our communities safe. Our broad coalition understands that protecting the Second Amendment rights of law-abiding Americans goes hand-in-hand with keeping guns away from criminals, drug abusers, the seriously mentally ill, and other dangerous individuals.

To that end, we fully support the following three legislative proposals – and we hope you will support them as well:

- **Require every gun buyer to pass a criminal background check:**

Background checks are the only systematic way to stop felons, domestic abusers and other dangerous people from buying firearms. These checks are instantaneous and highly effective. Since its inception, the National Instant Criminal Background Check System (NICS) has blocked nearly 2 million permit applications and firearms sales to individuals who are barred by federal law from owning guns. But criminals and other prohibited purchasers avoid these checks by buying firearms – including online and at gun shows – from unlicensed “private sellers” who are not required by federal law to conduct the checks. In 2012, an estimated 6.6 million guns were transferred between private individuals without a background check – up to 40 percent of the U.S. annual total.

The Fix Gun Checks Act – H.R.137 (113th Congress)/S.436 (112th Congress) – would close this enormous gap in our laws by requiring a criminal background check for every gun sale, with reasonable exceptions, including but not limited to temporary transfers during hunting and for self-defense. Expanding background checks for all gun sales is relatively simple to accomplish. Private sellers would be required to sell their guns through licensed dealers, who can manage the transfer safely and are equipped to conduct background checks and retain sales receipts should law enforcement need to investigate a crime involving the gun in the future. The federal government is currently required to destroy records of successful background checks for gun sales within 24 hours of the check. This system protects the privacy of the buyer and seller and ensures that the seller is free from liability if the gun is used in a crime by a future buyer.

Background checks are an effective way to reduce crime and gun trafficking. In states that require a background check for every handgun sale, intrastate gun trafficking is 48 percent lower,¹ and 38 percent fewer women are shot to death by intimate partners, even though the number of non-firearm homicides is nearly identical regardless of the background check laws.² After Missouri repealed a state requirement that a background check be conducted before every handgun sale in 2007, the share of crime guns purchased in-state increased by nearly 30 percent, and the share that appeared to have been trafficked doubled.

- **Get military-style weapons and high-capacity ammunition magazines off our streets:**

Military-style weapons and high-capacity ammunition magazines have no appropriate civilian or sporting function. They are designed to kill large numbers of people quickly and they have repeatedly been used to do so, including 28 percent of the mass shootings in the last four years. A study by our coalition of mass shootings since January 2009 revealed that killers who used assault weapons or high-capacity magazines shot more than twice as many people and killed 50 percent more than other shooters.

Though loopholes in the 1994 assault weapons ban weakened its effectiveness, over time it began to have a clear effect on criminal access to these dangerous technologies. According to a Washington Post analysis, the ban was associated with a 60 percent decline in the share of crime guns with high-capacity magazines recovered in Virginia between 1998 and 2004. After the federal ban expired, the share of crime guns recovered in the state that had high-capacity magazines increased each year through 2010, more than doubling from the 2004 low.³ Since the ban expired, 37 percent of police agencies observed increases in criminals' use of assault weapons and 38 percent observed increases in criminals' use of semiautomatic firearms with high-capacity magazines, according to a 2010 survey by the Police Executive Research Forum.⁴

¹ Daniel Webster, Jon Vernick, & Maria Bulzacchelli, "Effects of State-Level Firearm Seller Accountability Policies on Firearm Trafficking," *Journal of Urban Health*, July 2009. To gauge gun trafficking, the authors measured the ratio of likely trafficked guns recovered from crime scenes to the total of guns recovered. A "likely trafficked gun" was defined as having been recovered at a crime scene and not in the possession of its original purchaser within one year of its last legal sale.

² U.S. Department of Justice, Federal Bureau of Investigation, Supplementary Homicide Reports, 2011. Available at <http://bit.ly/V1GyFg>. Excludes New York due to incomplete data.

³ David Fallis & James Grimaldi, "VA data show drop in criminal firepower during assault gun ban," *Washington Post*, January 23, 2011, available at http://www.washingtonpost.com/wp-dyn/content/article/2011/01/22/AR2011012203452_pf.html.

⁴ <http://www.policeforum.org/library/critical-issues-in-policing-series/GunsandCrime.pdf>.

The Assault Weapons Ban of 2013 (S.150) would save lives by banning the manufacture and import of assault weapons and high-capacity magazines. By banning the transfer of grandfathered high-capacity magazines and requiring background checks for transfers of grandfathered assault weapons, the bill would keep the existing stock of weapons out of the hands of criminals.

- **Make gun trafficking a federal crime:**

Today, there is no clear and effective statute making gun trafficking a crime. Prosecutors are instead forced to rely upon a weak law prohibiting engaging in the business of selling guns without a federal license, which carries the same punishment as trafficking chicken or livestock. As a result, according to the Justice Department's Inspector General, U.S. Attorneys decline to prosecute 25 percent of those cases while declining only 9 percent of drug conspiracy cases. Mayors Against Illegal Guns supports proposals to empower law enforcement to investigate and prosecute straw purchasers, gun traffickers, and their criminal networks. Anti-gun trafficking legislation – S.54 (113th Congress) and H.R. 2554 (112th Congress) – would create a federal firearms trafficking offense, punishable up to 20 years in prison.

Last month in Newtown, Conn., the entire nation witnessed the tragic consequences of our failure to address gun violence after 26 innocent people – including 20 young children – were ruthlessly murdered at Sandy Hook Elementary School. While this travesty left our country shaken to its core, this bloodshed is all too common across the United States.

We need lawmakers in Washington to act, and we need you and your committee to lead on this critical issue.

Sincerely,



Thomas M. Menino
Mayor of Boston
Coalition Co-Chair



Michael R. Bloomberg
Mayor of New York City
Coalition Co-Chair

CC: Senator Dianne Feinstein
Senator Orrin Hatch
Senator Charles Schumer
Senator Jeff Sessions
Senator Dick Durbin
Senator Lindsey Graham
Senator Amy Klobuchar
Senator John Cornyn
Senator Sheldon Whitehouse
Senator Michael Lee
Senator Al Franken

Senator Ted Cruz
Senator Christopher Coons
Senator Jeff Flake
Senator Richard Blumenthal
Senator Mazie Hirono

Congressional Testimony of Miya Rahamim, daughter of a victim of gun violence
Senate Judiciary Committee Hearing: "What Should America Do About Gun Violence?"
January 30, 2013

Nothing prepares you to hear the news that your father has been murdered with a gun. One Thursday last September, my 17-year-old brother was on a bus going to visit a friend, when he saw an early report that there was a shooting in the Bryn Mawr neighborhood in Minneapolis. This is a small neighborhood where my dad had built his business. My dad was an immigrant living the American dream, extremely proud that all of his products were made in America. He created dozens of jobs over the years, invented a system of Braille that made it easier for blind people to read signs, and exported products all over the world, including, as he loved to tell people, to China. My brother sent a text message to my dad telling him that he heard that there had been a shooting nearby and to be careful. Of course, what he did not know – what none of us knew at the time – was that his text to our dad would go unanswered because, just shortly before, my dad had been shot twice in the head at the company he had built. This is something that I will go to bed every night and wake up every morning knowing. The gunman killed or fatally wounded six fathers that day, all of them leaving behind their children far too soon.

The key factor about the gun violence prevention legislation introduced in the 113th Congress is this: It will save lives. The gun used to kill my father and five other fathers had a capacity of 15 rounds. A law limiting the capacity to 10 rounds might have saved lives. Requiring background checks for all gun sales will save lives. While Congress cannot prevent every death from gun violence, it has a moral obligation to attempt to save as many lives as possible. By passing this legislation, Congress can prevent some Americans from receiving the call that is dreaded most – that their father or mother, brother or sister, spouse or child will not be coming home. This legislation will have great impact on the most important thing in our lives – our families.

I want my story told so that other families will not have to go through the devastation that mine has been through, when it is often times preventable through sensible gun violence prevention policies. My dad lived the American dream, but died the American nightmare. The U.S. has a disproportionately high rate of gun violence. America's gun-homicide rate is *20 times* that of other industrialized nations. According to David Hemenway, Harvard professor of health policy and management and director of the Harvard Injury Control Research Center, an American child is *13 times* more likely to be killed by a gun than his or her counterpart in Japan, Italy, or other industrialized countries. Gun violence kills 33 Americans every day, and more than 12,000 Americans will be murdered with guns over the next year if no action is taken to stop the gun violence epidemic. Many of these gun deaths are preventable. But under the current policies, the United States has the highest per capita rate of firearm-related murders of all developed countries. We should not be ok with being the leading developed country in gun-related homicides.

Background Checks

There is not just a loophole in background checks – there is a gaping hole. At least 40% of gun sales are made without background checks. There are websites that direct people to two possible ways of obtaining a gun: through a registered firearms dealer, where a background check would be required, or through a private sale, where no background check would be required as long as the sale is conducted within state lines. It is clear which route people who know they would not pass a background check will choose. This is akin to offering two security lines, one with a metal detector and one without, and allowing everyone, including terrorists, to decide which line they want to go through. In a national survey of prison inmates, 80% of inmates who used a handgun in a crime said that they acquired it through a transaction with a private seller. Further, the number of women killed with a gun by an intimate partner is 34% lower in states that have closed the private sales loophole than in states that have not. The proposed safeguard will save lives.

Under the current policy, the shooter in the October 2012 Wisconsin spa shooting, who would not have been able to pass a background check due to a restraining order that his estranged wife had against him, was able to easily obtain a gun. He simply went online, found a private seller, met him in the parking lot of a fast food restaurant and purchased the weapon without a background check, which he then used to kill his wife and two other women and injure four people. The background check system only works as it should when it is applied universally, without a simple way for criminals and others who know that they will not pass a background check to easily opt out of the system.

The Assault Weapons Ban and Ban on High Capacity Magazines

Assault weapons and high capacity magazines are designed for a specific purpose: to kill as many people as possible as quickly as possible. General Stanley McChrystal backed a ban on assault weapons, saying that these military-style weapons belong in the hands of soldiers, not on the streets, and that these weapons are designed to have devastating effects on the human body. In the Aurora movie theater shooting, the gunman used, among other weapons, an AR-15 assault weapon, modeled after the military M-16 rifle, with a 100 round barrel magazine, whose production and transfer would be barred under the bill under consideration. It allowed him to shoot 70 people, killing 12 people and wounding 58 others in less than two minutes. The legislation to limit the capacity of semi-automatic magazines to 10 rounds may have limited the number of children killed in Newtown, Connecticut and the number of people killed in the Minneapolis workplace shooting that resulted in my father's death.

Establishment of a Federal Gun Trafficking Law

The federal gun trafficking law is a common sense proposal to crack down on straw purchasers, those who pass background checks and buy guns to give to criminals or others forbidden from purchasing them. Under the current policies, trafficking in deadly weapons carries the same federal penalties as trafficking chicken or livestock. Many people would be surprised that this bill is not already a law.

The proposed reforms are common sense harm-reduction policies to address what many people consider to be the biggest public health and safety issue facing the nation today. According to the American Academy of Pediatrics (AAP), which supports the proposed legislation, gun injuries cause twice as many deaths as cancer, five times as many as heart disease, and 15 times as many infections. The pediatricians in the AAP note that firearm-related deaths are one of the top three causes of death in American youth. We cannot let this continue. In the face of the epidemic of gun violence, Congress must act now. I have a personal plea to each of you who are entrusted to consider this legislation: Imagine yourself sending that text that goes unanswered, or receiving that dreaded phone call about a loved one. You have the power to save lives. Please take action now.



**Statement by the
NAACP Legal Defense and Educational Fund, Inc.**

**United States Senate
Committee on the Judiciary**

Hearing on “What Should America Do About Gun Violence?”

**Hart Senate Office Building
Room 216**

January 30, 2013

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) is pleased to submit this statement to the Senate Judiciary Committee in connection with the hearing on “What Should America Do About Gun Violence?” We want to thank Chairman Patrick Leahy, Ranking Member Charles Grassley and Members of the Committee for holding the hearing on an issue of such importance to all Americans.

The tragedy at Sandy Hook Elementary School in Newtown, Connecticut has devastated our nation and called into clear focus the question of what can be done to reduce gun violence in our communities. We are encouraged by the national momentum in the wake of the tragedy that appears to support meaningful action, once and for all, to prevent and reduce gun violence. Many of President Obama’s proposals are to be applauded, both in their scope and depth, and in their focus on the root causes of gun violence.

There is no doubt that communities of color would benefit from greater protections from gun violence. African Americans are disproportionately impacted by gun-related homicide. Indeed, “young black men die of gun homicide at a rate eight times that of young white men.”¹ Rampant and sustained gun violence has had a devastating effect on our families and communities. African Americans residing in urban areas are much more likely to die from gun violence than whites. In Chicago last year, 87 percent of the 500 homicides were gun-related; while African Americans are thirty-three percent of Chicago’s population, they comprised 70 percent of the murder victims.² Without question, the issue of gun violence and how to prevent or reduce it is a critical one for the African-American community.

In view of the significant impact of gun violence on African Americans, LDF is supportive of Congressional action to ban assault weapons. We believe that this measure will help to ensure that military-style weapons and high-capacity magazines are off our streets and out of the hands of those who would harm our children. LDF is deeply committed to ensuring a safe school environment for our children. Indeed, for over seventy years, LDF has fought for access to a quality and safe educational environment for African-American children.

We are always mindful, however, that young black men and other people of color are also victims of the racially disproportionate enforcement of our criminal laws. Studies of the federal criminal justice system have long documented these racial disparities.³ The enforcement of weapons-related laws is not immune from this serious problem. “Black arrest rates” for weapons offenses are “in the vicinity of four times the White arrest rates.”⁴ Moreover, the United States Sentencing Commission has “detected notable differences in prosecutorial decisions to seek sentence enhancements for certain federal offenses involving a firearm depending on the race of

¹ David Cole, *Who Pays for the Right to Bear Arms?*, N.Y. Times, Jan. 1, 2013, at A19.

² *Id.*

³ “[B]lack male federal defendants receive longer sentences than whites arrested for the same offenses and with the same prior records. On average black males receive sentences that are approximately 10% longer than comparable white males” Sonja B. Starr & M. Marit Rehavi, *Racial Disparity in Federal Criminal Charging and Its Sentencing Consequences*, (U. Mich. L. Sch. Program in L. & Econ. Working Paper Series, Working Paper No. 12-002, 2012, at 24).

⁴ Graham C. Ousey & Matthew R. Lee, *Racial Disparity in Formal Social Control: An Investigation of Alternative Explanations of Arrest Rate Inequality*, 45 J. Res. Crime & Delinq. 322, 337 (2008).

the defendant.”⁵ The disproportionate enforcement of weapons offenses is further evidenced in prosecutions of youth.⁶

Because of the pre-existing racial disparities in the federal criminal justice system generally, and prosecution of federal weapons offenses specifically, it is important to us that any federal legislation seeking to ban assault weapons contain some mechanism to ensure that people of color are not disproportionately prosecuted under the new law. A racial impact statement, which would require federal prosecutors to examine the disparate impact of their prosecutions under the new legislation, would serve this goal. Indeed, as you consider the various proposals to ban and/or restrict the use of dangerous weapons, we urge you to take care that racial disparities do not result from the enforcement of any new laws.

“Policing” Schools Is Not The Answer To The Sandy Hook Tragedy

For the remainder of our comments, we focus on the importance of ensuring that proposals for reducing gun violence do not have unintended consequences when it comes to our students and schools. Sadly, the recent tragedy at Sandy Hook illustrates how this issue of gun violence can impact even some of the safest places in our communities – public schools. Unfortunately, this is not the first time our nation and lawmakers have been called to respond to gun violence in communities or at a school. In addition to the images of violence in communities captured on many evening news broadcasts, we have witnessed how gun violence also impacts school communities, in places such as in Heath High School in West Paducah, Kentucky; Columbine High School in Littleton, Colorado; and Virginia Tech University in Blacksburg, Virginia. These incidents have awakened the public’s consciousness on issues of gun violence. Yet, each time, the nation fails to respond to the root causes.

For example, in the wake of the shootings at Columbine High School, state and local lawmakers followed a trend that began even before that tragedy, adopting “zero tolerance” disciplinary policies and significantly expanding the presence of police and security equipment in schools.⁷ Many other school districts followed suit.⁸ These leaders soon learned, however, that the policies they adopted did not make schools or communities any safer. Instead, they offered only an illusion of safety while also leading to a host of unintended consequences that damaged children and entire school communities in the process. As Colorado State Senator Linda Newell

⁵ Brennan Center for Justice, *Racial Disparities in Federal Prosecutions* 10 (2010). One study has found “black and Hispanic offenders convicted of weapons charges” to be “especially unlikely to receive charge reductions from U.S. Attorneys.” Lauren O’Neill Shermer & Brian D. Johnson, *Criminal Prosecution: Examining Prosecutorial Discretion and Charge Reductions in U.S. Federal District Courts*, 27 Just. Q. 394, 424 (2010).

⁶ Even though “white youth report committing higher levels of weapons possessions crime, . . . African-American youth are arrested 2.5 times the rate of whites for weapons offenses.” Eleanor Hinton Hoyt et al., Annie E. Casey Found., *Pathways to Juvenile Justice Reform: Reducing Racial Disparities in Juvenile Detention* 20 (2001).

⁷ Russell Skiba et al., *Are Zero Tolerance Policies Effective in the Schools? A Report by the American Psychological Association Task Force 23-25* (2006), available at <http://www.apa.org/pubs/info/reports/zero-tolerance-report.pdf>.

⁸ *Id.* at 29.

of Littleton, Colorado noted, “As a result of our zero tolerance policies, nearly 100,000 students have been referred to law enforcement over the past decade, and who benefits from that?”⁹

We believe that meaningful gun control efforts will better serve the safety of our schools and communities, and we commend Chairman Leahy and Judiciary Committee Members for exploring such efforts. To the extent that this hearing and those in the future explore school safety in the context of gun violence, we must caution the Judiciary Committee against supporting proposals that would place more police in schools. Instead, we urge the Committee to focus on the root causes of gun violence which can prevent these tragic incidents.

As the nation wrestles with the fundamental question of how to keep our children safe, we must learn from the consequences of our prior efforts. But recent media reports and policy proposals suggest that we risk going down the same ill-fated path again. For example, Sheriff Joe Arpaio in Arizona’s Maricopa County has stationed 500 armed, uniformed volunteers outside county schools.¹⁰ The Fontana Unified School District Police in California purchased 14 semiautomatic assault rifles.¹¹ Former U.S. Secretary of Education William Bennett has called for arming school teachers and principals.¹² And the National Rifle Association urges the installation of armed persons in every school while a number of others have called for either armed or unarmed officers in schools (these officers are often referred to as “School Resource Officers”).¹³ All of these alternatives fail to address the root causes of gun violence. They are destined to have negative consequences while continuing to expose our schools and communities to danger.

While both school-based policing and zero tolerance policies were intended to address only the most serious threats to students’ safety and well-being, it is now common for students to face citations, summonses and even arrest by school-based police officers for the types of adolescent misbehavior that should be addressed by educators and parents. For example, in Florida, 16,377 students – 45 students per day – were referred to juvenile courts by school-based law enforcement officers during the 2010-2011 school year.¹⁴ Two-thirds of these students were referred for misdemeanors, such as disrupting a school function, disorderly conduct, and minor schoolyard fights.¹⁵ In Pennsylvania, school-based arrests practically tripled in the post-

⁹ Senate Committee Passes Bipartisan Bill by Senators Newell and Hudak to Ensure Student Safety and Success Today, March 1, 2012, <http://coloradosenate.org/home/features/senate-committee-passes-bipartisan-bill-by-senators-newell-and-hudak-to-ensure-student-safety-and-success-today>.

¹⁰ Nirvi Shah, *Nations, Districts Step Up Safety*, Education Week, Jan. 23, 2013, at 1.

¹¹ Gillian Flaccus, *Fontana, Calif., Schools Get High Powered Rifles*, Assoc. Press, Jan. 24, 2013.

¹² See *Panel Examines How to Pre-empt Violence*, Comment to *Meet the Press*, MSNBC (Dec. 16, 2012), <http://video.msnbc.msn.com/meet-the-press/50215783#50215783> (Stating Former U.S. Secretary of Education William Bennett has called for arming school teachers and principals); see also William Bennett *The Case for Gun Rights is Stronger Than You Think*, <http://www.CNN.com/2012/12/19/Opinion/bennett-gun-rights/index.html> (last visited January 30, 2013).

¹³ Wayne LaPierre, Remarks at NRA Press Conference (Dec. 21, 2012) (transcript available at <http://www.nytimes.com/interactive/2012/12/21/us/nra-news-conference-transcript.html>).

¹⁴ Florida Department of Juvenile Justice, *Delinquency in Florida’s Schools: A Seven Year Study* 3 (2011), available at <http://www.djj.state.fl.us/docs/research/2010-11-delinquency-in-schools-analysis.pdf?sfvrsn=0>.

¹⁵ *Id.* at 8-9; ACLU of Florida, Advancement Project, and Florida State Conference of the NAACP, *Still Haven’t Shut Down the School-to-Prison Pipeline* 6-8 (2011).

Columbine era, between 1999-2007.¹⁶ And in Meridian, Mississippi, the U.S. Department of Justice recently filed a federal civil rights suit against the city, county, state agencies, two youth court judges and the state itself for furthering what has become known as the School-to-Prison Pipeline. According to the suit, these officials “engaged in a pattern or practice of unlawful conduct through which they routinely and systematically arrest and incarcerate children, including for minor school rule infractions, without even the most basic procedural safeguards, and in violation of these children’s constitutional rights.”¹⁷

Racial disparities in the frequency of punishment and severity of punishment have grown since the adoption of zero tolerance policies and the increase of police presence in schools. According to the U.S. Department of Education’s Civil Rights Data Collection (CRDC), “across all districts, African-American students are over 3½ times more likely to be suspended or expelled than their white peers.”¹⁸ And preliminary CRDC data indicates that African-American students account for 42% of the students referred to law enforcement and 35% of those arrested in schools, even though they only comprise 18% of the sample population used for the survey.¹⁹

Relying on police to address school discipline can also lead to substantial academic harms. A growing body of research suggests that excessive and overly harsh school discipline undermines academic achievement and our nation’s efforts to close racial achievement gaps.²⁰ And one study found that a first-time arrest doubles the odds a student will drop out of school; a first court appearance quadruples those odds.²¹

Policing schools harms students who are arrested but can negatively affect the educational opportunities of other students, as well. Police involvement in school discipline and extensive security measures can create an environment of alienation and distrust for all students, far from the type of learning environment all students need to succeed.²²

¹⁶ Advancement Project, *Test, Punish, and Push Out: How “Zero Tolerance” and High-stakes Testing Funnel Youth into the School-to-Prison Pipeline* 18 (2010), available at http://b3cdn.net/advancement/d05cb2181a4545db07_r2im6cage.pdf.

¹⁷ Complaint, United States v. City of Meridian, No. 4:12-cv-00168-HTW-LRA (S.D. Miss. filed Oct. 24, 2012), available at http://www.justice.gov/crt/about/spl/documents/meridian_complaint_10-24-12.pdf.

¹⁸ Office for Civil Rights, U.S. Department of Education, Civil Rights Data Collection Summary 2 (2012).

¹⁹ *Id.*

²⁰ Skiba et al., *supra* note 7 at 44-48; Tony Fabelo et al., *Breaking Schools’ rules: A Statewide Study of How School Discipline Relates to Students’ Success and Juvenile Justice Involvement* x, 40-46, (2011); Anne Gregory, Russell J. Skiba & Pedro Noguera, *The Achievement Gap and the Discipline Gap: Two Sides of the Same Coin?* 39 Educational Researcher 59 (2010).

²¹ Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, 23 Justice Quarterly 462, 473-477 (2006).

²² Matthew J. Meyer & Peter E. Leone, *A Structural Analysis of School Violence and Disruption: Implications for Creating Safer Schools*, 22 Education and Treatment of Children 333, 352 (1999) (finding highly-restrictive efforts to control students by involving police in school disciplinary matters cause higher levels of school disorder by diminishing students’ belief in the legitimacy of school staff authority); Randall R. Beger, *The Worst of Both Worlds*, 28 Crim. Just. Rev. 336, 340 (2003) (finding that aggressive security measures produce alienation and mistrust among students which, in turn, can disrupt the learning environment and create an adversarial relationship between school officials and students).

The federal government has become increasingly aware of better ways to keep schools and communities safe. In 2011 U.S. Secretary of Education Arne Duncan and Attorney General Eric Holder launched the Supportive School Discipline Initiative – an inter-agency collaboration tasked with developing policy solutions to replace exclusionary discipline practices and eliminating racial disparities in the process.²³ The FBI, the Secret Service, and others have warned that the best way to prevent violence targeted at schools is through improving the communication and connectedness between students and educators.²⁴

Parents, students, educators and policymakers are also working at the local, state, and federal levels on similar initiatives. For example, Colorado lawmakers recently passed legislation that abandons the post-Columbine zero tolerance and law enforcement-driven policies in favor of school-based solutions.²⁵ And juvenile justice, law enforcement and education officials in Clayton County, Georgia were able to reduce their school-based court referral rate by almost 70% while increasing the graduation rate by 24% after ensuring that schools, and not police, were in charge of addressing school disciplinary issues.²⁶

Conclusion

In responding to the Sandy Hook tragedy, we urge the Judiciary Committee to address the root causes of gun violence. Furthermore, we urge the Committee to study the negative consequences of prior responses to school shootings, including harsh discipline policies and enhanced police presence.

Earlier this month, LDF joined Advancement Project, the Alliance for Educational Justice, and the Dignity in Schools Campaign in releasing an issue brief entitled “*Police in Schools Are Not the Answer to the Newtown Shooting*,” available on our website. Many of the findings detailed in our paper are also part of the record from a recent hearing of the Judiciary Committee’s Subcommittee on the Constitution, Civil Rights, and Human Rights entitled “Ending the School-to-Prison Pipeline,” held just two days before the tragedy in Newtown. We strongly recommend that the Committee review the issue brief ahead of any legislative responses to this tragedy.

Thank you again for the opportunity to submit this statement. We stand ready to work with this Committee on positive solutions to promote safe and healthy school environments.

²³ Press Release, Department of Justice Office of Public Affairs, Attorney General Holder, Secretary Duncan Announce Effort to Respond to School-to-Prison Pipeline by Supporting Good Discipline Practices (Jul. 21, 2011), available at <http://www.justice.gov/opa/pr/2011/July/11-ag-951.html>.

²⁴ See Dewey G. Cornell et al. *A Call for More Effective Prevention of Violence* (Dec. 19 2012), available at <http://curry.virginia.edu/articles/sandyhookshooting>; United States Secret Service and United States Department of Education, *The Final Report and Findings of the Safe Schools Initiative: Implications for the Prevention of School Attacks in the United States* (May 2002), available at http://www.secretservice.gov/ntac/ssi_final_report.pdf.

²⁵ H.B. 1345, 68th Gen. Assem. (Colo. 2012) (requiring school districts to develop and enforce discipline codes in a manner designed to reduce referrals to law enforcement and minimize students’ exposure to the juvenile and criminal justice system).

²⁶ *Ending the School to Prison Pipeline: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Human Rights of the S. Comm. on the Judiciary*, 112th Cong. (2012) 4-5 (statement of Hon. Steven Teske), available at <http://www.judiciary.senate.gov/pdf/12-12-12TeskeTestimony.pdf>.

January 29, 2013

Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Leahy:

On behalf of the more than three million members of the National Education Association – dedicated educators who serve and protect millions of children every day – we would like to offer our views in advance of this week’s Judiciary Committee hearing entitled, “What Should America do about Gun Violence?” We commend the Committee for holding this very important hearing and hope you will use this opportunity to identify immediate steps to address the epidemic of gun violence in our nation.

From Paducah, Kentucky in 1997 to Newtown just last month, every member of the National Education Association grieves when students and educators are victims of horrific violence. We are a family, so we grieve for the parents who have lost children, and we grieve for the families of the educators who time and time again put themselves between bullets and their students. Now, more than ever, we stand ready to speak out and mobilize to protect our students and communities from further pain and needless violence.

NEA devotes considerable resources to addressing school safety, including professional development for our members in school safety, bullying, bias/harassment, and cultural competence. We are running a “Bullyfree: It Starts with Me” campaign to ensure educators have the tools they need to identify and prevent bullying, which is frequently a source of isolation and depression for students and which can be a precursor to violent behavior. We have a world-class school crisis guide (<http://crisisguide.neahin.org/crisisguide/>) and several state affiliates have crisis response teams that are frequently deployed to help in tragic circumstances. But, preventing future tragedies requires more than this. It requires a comprehensive approach and a real commitment from our federal, state, and local elected officials to stand up and do what is necessary to protect our children.

NEA supports a multi-pronged approach to gun violence prevention. As President Obama said, there is “no single piece of legislation that will solve this problem.” If Congress were to pass legislation requiring background checks for every gun purchase, the nation would still need enough mental health services and professionals making diagnoses about individuals (and states submitting those records to NICS) to make the background check system reliable and effective. Furthermore, since schools are often the places in which some of the first signs of mental health issues can be spotted and diagnosed, it is all the more important to ensure adequate numbers of qualified school personnel to make these diagnoses and/or spot warning signs of potentially problematic or violent behavior. Complicating matters, there is a huge shortage of these professionals in our public education system (from pre-k through higher education), which impedes the ability of school personnel to ensure a safe, secure, respectful, and nurturing learning environment.

NEA's recommendations for immediate federal action include:

- **Common-sense gun violence prevention.** We strongly support closing loopholes and requiring background checks for every gun purchase in America – be it retail, online, or at a gun show. In addition, we support legislation introduced by Senator Feinstein (S.150) to reinstate the ban on assault weapons and high-capacity clips. We believe assault weapons and high-capacity magazines should be used by soldiers and police officers. These commonsense measures are very much in line with the views of NEA members. A new NEA member poll indicates overwhelming support for stronger gun violence prevention laws, including background checks and bans on assault weapons and high-capacity magazine clips. These measures will rally broad community support, especially when coupled with a greater focus on mental health and safe, secure, and supportive school environments.

- **Greater emphasis on mental health.** We need a national focus on mental health, including development of better screening tools to identify, evaluate, and treat mental illness. In addition, we should provide more funding for School-Based Health Centers and providers to staff the centers. We also must address the current lack of parity in insurance for mental health services.

- **School safety and student support.** We must make our schools safer, not only by enhancing their physical security and making sure they are prepared to respond to emergencies like a shooting, but also by creating safer and more nurturing school climates that help prevent school violence.

To do this, however, we must let communities decide for themselves what kind of personnel and assistance they need to ensure safety. To help schools, we should provide more resources for school counselors and school psychologists, and training for school personnel in not just school safety, but in diagnostic training to spot warning signs for mental health issues and/or potential for students to engage in high-risk or anti-social behavior. Funding for school security personnel, like school resource officers, could also be an option conditioned on local community support and appropriate training for officers and school personnel together, including on bullying, cultural competence, positive behavioral supports, and appropriate classroom management.

We can also support students, giving them access to programs that teach conflict management, an appreciation of diversity, and strategies for being a part of a school community. And, we can increase our focus on bullying prevention. We can make available resources and technical assistance from emergency preparedness experts to retro-fit or make school entrances and facilities safer.

We must note that America's educators resoundingly reject the notion of arming school employees as a means of ensuring school safety. Only 22 percent of NEA members polled favor a proposal to allow teachers and other school employees to receive firearms training and allow them to carry firearms in schools, while 68 percent oppose this proposal (including 61 percent who strongly oppose it.)

We thank you for the opportunity to submit these comments. We look forward to working with the Committee to ensure that we never again will have to grieve the loss of children and educators to senseless gun violence.

Sincerely,
Mary Kusler
Director of Government Relations

The Washington Post

Make the debate over guns worthy of our son

By Mark Barden and Jackie Barden, Published: January 29

Mark Barden is a musician and Jackie Barden is a teacher. They live in Newtown, Conn.

Wednesday's Senate Judiciary Committee hearing on gun violence is the latest in a series of events following the Dec. 14 shootings at Sandy Hook Elementary School. Our 7-year-old son, Daniel, 19 of his first-grade classmates and six educators were killed in the tragedy. We believe this hearing is an opportunity to rise above the hard-line rhetoric and intransigence that too often lead to inaction and hopelessness, and we hope that our leaders and our nation will start a new conversation with a chance of achieving real change.

Our Daniel was a constant source of laughter and joy. He was intelligent, articulate, incredibly affectionate, fair, thoughtful toward others and unfailingly polite. Daniel believed in holding doors open for strangers. He talked to the person sitting alone. He loved to help clean up a mess, and he made sure there was enough milk for everyone before adding it to his cereal.

His kindergarten teacher recently wrote to us: "He is the kind of student that should come wrapped in ribbon because he is a gift to his teachers. I can remember leaving notes for our substitute to 'ask Daniel' if she or he needed help with anything."

Motivated by Daniel's empathy and kindness, one of our relatives created a Facebook page, "What Would Daniel Do?," to inspire others to reach out as our youngest son did.

As lawmakers and others discuss what can be done to curb gun violence, we hope Americans will ask, What would Daniel do?

Daniel would listen and be respectful. Our country needs a new dialogue, one that doesn't follow the tired script of political squabbling. Any improvement to our laws, no matter how small or reasonable, should not be decried as the forward wave of an attempt to "ban guns" or "take away rights." Even those of us who have lost the most are suggesting no such thing.

Daniel would be honest. We know that there are no easy answers to these multifaceted issues. Anyone who suggests that a single law would "solve the problem" isn't telling the truth. But neither is anyone who says that changes in our laws can't make a difference.

Daniel wouldn't give up hope. We refuse to accept the status quo. Making our society safer will require sustained, comprehensive action by individuals as well as by communities and government. As parents, there is nothing more important to us than our relationship with our children. Every parent can start right there, in their own home. On a broader level, it is urgent that we address the gaps in our mental health system and examine school security. We must have

the same open dialogue about gun responsibility and accountability. The parental desire to love and protect our children is common ground for gun owners and non-gun owners alike.

We have joined with other families, neighbors and friends in making the Sandy Hook Promise (www.sandyhookpromise.org). We hope every member of Congress and Americans nationwide will join us in pledging to honor the lives lost last month by coming together to end these violent tragedies.

Our Daniel wanted to be a fireman like his uncles. He played drums in our family band, and he could run like the wind. Until Dec. 14, Daniel's future was limited only by the size of his dreams.

Our son's future was stolen from him: There will be no firehouse, no more rock band, no Boston Marathon.

But if our nation uses this moment to make the future brighter for other children, Daniel's life and the lives of his classmates and educators will have meaning for years to come.

Our nation's ability to deal with gun violence is limited only by the civility of our discourse, the scope of our ambitions and — as Daniel would have done — our willingness to come together and take action.

Read more on this issue: MaryAnn Murtha: Mark the date, not the town, of the Dec. 14 shootings
Sen. Charles Schumer: A middle ground on gun control Joseph Califano Jr.: Gun-control lessons from Lyndon Johnson
The Post's View: No 'excuse for inaction' on gun control Ann Hood: A parent's worst nightmare
Michael Rosenwald: Why do we know so little about Adam Lanza?

http://www.washingtonpost.com/opinions/in-response-to-newtown-shootings-think-of-daniel/2013/01/29/b658933a-6a48-11e2-95b3-272d604a10a3_print.html

Written Testimony

Submitted for the record by

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For the hearing before the
Senate Committee on the Judiciary

on

“What Should American Do About Gun Violence?”

Wednesday, January 30, 2013

Two months ago, Johns Hopkins University co-sponsored the National Summit on Multiple Casualty Shootings, in partnership with the Department of Justice, Office of Community Oriented Policing Services (COPS), and the Department of Homeland Security, Federal Law Enforcement Training Center (FLETC). While much attention is being given to multiple casualty shootings, the nation's public safety personnel are equally concerned about the violence and trauma resulting from gun-related acts of domestic violence, street crime, and suicide that occur every day. These incidents devastating and disrupt neighborhood and community well-being.

We can do more to tend to the public's safety and provide people with a greater sense of peace and safety where they live, work, shop, and recreate. We believe, and evidence supports, that much of the gun-related violence and subsequent suffering that occurs in our nation's homes, neighborhoods, small businesses, and schools can be prevented. One of the most effective ways to prevent tragic events from occurring is to do more to control access to guns.

In seeking new and better ways to prevent gun violence, the Division of Public Safety Leadership embraces the principles established by the National Law Enforcement Partnership to Prevent Gun Violence and with Mayors Against Illegal Guns. These principles were embraced by the Ad Hoc Committee of the Maryland Chiefs of Police Association last week. They are:

- The level of gun violence in the United States, specifically firearm-related injuries and deaths including homicides, suicides, and accidental shootings, is unacceptable and demands immediate attention.
- The level and lethality of gun violence directed at police officers requires an organized and aggressive response from policy makers at the federal, state, and local levels.
- Elected officials must close the gaps in the current regulatory system, including those that enable felons, minors, persons with mental illness, and other prohibited persons to access firearms, and those that allow the trafficking of illegal guns.

- Law enforcement plays a critical role in preventing gun violence and solving crime.
- Effective strategies for the strict enforcement of laws concerning the illegal possession, trafficking, and criminal use of firearms are vital, and need to be supported by data, research, technology, training, and best practices.
- Because the public's health and safety depends on the efforts of law enforcement, agencies must have resources sufficient to prioritize the protection of officers and communities against illegal guns and firearm violence.
- The crisis of gun violence in our nation necessitates a sustained, coordinated, and collaborative effort involving citizens, elected officials, law enforcement, and the entire criminal justice system.

In response, we join the above cited organizations in calling upon the President of the United States and members of Congress to:

1. Require background checks for all firearm purchasers.
2. Improve background checks by ensuring that the National Instant Criminal Background Check System (NICS), which maintains records of those who are legally prohibited from purchasing guns, be complete and accurate.
3. Ban new semi-automatic assault weapons.
4. Limit high-capacity ammunition magazines to ten rounds.
5. Oppose federal preemption of state laws governing the carrying of concealed weapons.

In January, the Johns Hopkins University, School of Education, Division of Public Safety Leadership hosted the second national Summit on Campus Public Safety for the Department of Justice, Bureau of Justice Assistance and facilitated the meeting of the Maryland Chiefs of Police Association Ad Hoc Committee on Gun Violence. We have a legacy of scholarship and leadership in this area and welcome the opportunity to support all reasonable efforts to prevent gun violence.

The Johns Hopkins University, School of Education, Division of Public Safety Leadership (DPSL) provides education, research, and technical assistance to the fields of law enforcement, fire/EMS, intelligence analysis, emergency management, public health, security, corrections, and the military. DPSL cultivates viable communities by developing and disseminating educational and technical assistance programs that foster the ethical, social, operational and intellectual development of professionals who serve public safety and related fields. The Division provides graduate, undergraduate, certificate, and noncredit education designed to advance and sustain the well-being of people and their neighborhoods and communities. All students in PSL are active public safety practitioners. Over 1,000 PSL graduates hold leadership positions nationwide in federal, state, and local agencies and play a significant role in shaping the future of American public safety. PSL graduates currently serve as chiefs of police in Denver, San Antonio, Washington, D.C., and Prince George's Counties in Maryland. They also serve as senior executives in federal agencies, such as the U.S. Secret Service, U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives, and Immigration and Customs Enforcement.



Written Testimony

Submitted for the record by

Daniel W. Webster, ScD, MPH
Professor and Director
Johns Hopkins Center for Gun Policy and Research

For the hearing before the
 Senate Committee on the Judiciary

on

“What Should American Do About Gun Violence?”

Wednesday, January 30, 2013

On January 14-15, 2013, more than twenty of the top researchers and gun policy experts gathered to participate in a Summit on Reducing Gun Violence in America at Johns Hopkins, and presented findings and analyses that were just published in a book.¹ These leading scholars identified numerous weaknesses in current federal firearms policy which enable criminals, those with severe mental illness, perpetrators of domestic violence, and underage youth to obtain firearms. These weaknesses in our firearms policies play an important role in explaining why the United States’ homicide rate is seven times higher than the average rate among other high-income countries.²

A recent national survey we conducted found very broad support – among gun owners and non-gun-owners and across political party affiliation – for laws prohibiting these and other high-risk groups from possessing firearms. There was similarly broad support for measures to keep guns from these groups, such as requiring background checks for all gun sales and stronger laws governing licensed gun dealers.³ Importantly, research shows that prohibiting high-risk groups from possessing firearms reduces violence and saves lives,^{4,5} especially if necessary records are available for law enforcement to deny prohibited individuals.⁶

Opponents of stronger gun laws often claim that we simply need to do a better job of enforcing current gun laws. But current federal laws are written in ways that make it very difficult to hold firearm sellers, whether licensed dealers or private sellers, accountable if they sell firearms to criminals or traffickers.^{7,8} Non-licensed sellers of firearms have no obligation to ensure that the prospective purchasers have passed a background check and can legally possess firearms.

Such a policy is indefensible and is commonly exploited by criminals and traffickers. It is not surprising that nearly eighty percent of handguns used by offenders incarcerated in state prisons report that they acquired their handguns from non-licensed sellers – friends, family, and sellers in the underground market.⁹ Nor is it surprising that states that fail to regulate private handgun transactions export guns to criminals in states that do regulate private handgun sales. If you follow the logic of arguments that requiring background checks for private gun sales is pointless because criminals won’t obey the law, then laws against drunk driving are pointless because drunks will always disobey those laws. Just as drunk

driving laws provide law enforcement with the tools to arrest individuals who break those laws and deter others from driving drunk, requiring background checks for all sales will provide law enforcement with the tools it needs to combat illegal gun trafficking and keep guns from prohibited individuals. Unfortunately, Congress has enacted several laws that shield scofflaw gun dealers from scrutiny, civil penalties, and criminal prosecution. The 1986 Firearm owners Protection Act weakened penalties for gun sales violations, increased standards of proof for prosecutions and actions against licensed gun dealers, and limited ATF law compliance inspections. The Protection of Lawful Commerce in Arms Act provided special immunity from lawsuits for negligent practices which enable criminals and other prohibited individuals to obtain guns. The Tiahrt amendments provided further protections to licensed gun dealers who sell many guns that subsequently are recovered from criminals.⁸

There is a growing body of research that has consistently demonstrated that laws which increase gun seller accountability and increase the risk to those involved in illegal gun transactions significantly reduce the number of guns diverted for criminal use. Whereas the federal Tiahrt amendments have been shown to increase the diversion of guns to criminals from suspect gun dealers,¹⁰ strong regulation and oversight of gun dealers reduces guns diverted to criminals,¹¹ as does being vulnerable to lawsuits for making illegal sales.^{12,13} Research has also shown that regulation of private sales of handguns,⁸ mandatory reporting of loss or theft of firearms from private owners, and permit-to-purchase licensing for handguns reduces the diversion of guns to criminals.⁹

By adopting many laws shown to be effective at that the state level, Congress could significantly reduce the availability of guns to dangerous individuals, which would translate into fewer lives lost, safer streets and homes, increased quality of life, and reduced government expenditures on health care, disability payments, criminal justice, and corrections.

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**Statement of Professors of Constitutional Law: The Second Amendment and the
Constitutionality of the Proposed Gun Violence Prevention Legislation**

January 30, 2013

Several proposed reforms to the nation's gun laws, including universal background checks and restrictions on high-capacity ammunition magazines and assault weapons, are now pending before Congress. Concerns have been raised that these measures might violate the Second Amendment. We, the undersigned professors with expertise in constitutional law, write to address those concerns.

In 2008, the U.S. Supreme Court held that the Second Amendment, which provides, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed," guarantees an individual's right to have a functional firearm in the home for self-defense. The Court's decision in that case, *District of Columbia v. Heller*, struck down a D.C. law that effectively barred the use of any firearm for self-defense. The law is now clear that the government may not completely disarm law-abiding, responsible citizens. The Court also made clear, however, that many gun regulations remain constitutionally permissible. "Like most rights," the Court explained, "the right secured by the Second Amendment is not unlimited." Writing for the Court, Justice Antonin Scalia explained that restrictions on "dangerous and unusual" weapons are constitutional and that "nothing in our opinion should be taken to cast doubt" on laws that prohibit "the possession of firearms by felons or the mentally ill" or laws that impose "conditions and qualifications on the commercial sale of arms."

In this sense, Justice Scalia recognized in *Heller* that, like other constitutional rights, the Second Amendment is not an absolute. The First Amendment, for example, provides that "Congress shall make no law . . . abridging the freedom of speech," but the Supreme Court has long and consistently held that some types of speech – for example, defamation, obscenity and threats – can be regulated; that some people – for example, public employees, members of the military, students and prisoners – are subject to greater restrictions on their speech than others; and that the government can reasonably regulate the time, place and manner of speech. As Justice Scalia explained in *Heller*, the rights guaranteed by the Second Amendment are likewise subject to appropriate regulation in order to enhance public safety.

In acknowledging the presumptive constitutionality of laws designed to prevent gun violence, including restrictions on who has access to firearms and what types of

firearms they may have, *Heller* is consistent with the history of the right to keep and bear arms. The founding fathers who wrote and ratified the Second Amendment also had laws to keep guns out of the hands of people thought to be untrustworthy. Such laws were necessary to ensure that the citizen militia referenced in the Second Amendment was “well regulated.” In the 1800s, many states restricted the sale or public possession of concealable firearms. In the early twentieth century, the federal government restricted access to unusually dangerous weapons, such as machine guns, and states barred people convicted of certain felonies from possessing firearms. Laws such as these were routinely upheld by the courts, which recognized the legitimacy of legislative efforts to keep the most dangerous weapons out of the hands of the most dangerous people.

While the permissibility of any particular reform depends on its details, the reforms currently being considered by Congress are clearly consistent with the Second Amendment. We express no view on the effectiveness or desirability of the policies reflected in the various proposals, but we all agree that none infringes the core right identified by the Court in *Heller*.

Universal background checks, especially those conducted instantaneously through the National Instant Background Check System, do not impose a significant burden on law-abiding citizens. Yet background checks may provide an important safeguard against easy access to guns by members of criminal street gangs, other felons, and the mentally ill. As with other rights that have eligibility criteria, such as the right to vote, the right to keep and bear arms is not offended by neutral measures designed to ensure that only eligible, law-abiding citizens exercise the right. Moreover, background checks imposed at the point of sale are typical of the “conditions and qualifications on the commercial sale of arms” recognized by the Supreme Court in *Heller*.

Restrictions on the manufacture and sale of high-capacity ammunition magazines and assault weapons are also consistent with the Second Amendment. In a recent opinion authored by Judge Douglas Ginsburg and joined by Judge Karen Henderson, the U.S. Court of Appeals for the District of Columbia Circuit held that such regulations are consistent with the Second Amendment and with the Supreme Court’s decision in *Heller*. The court of appeals recognized such weapons and magazines are not necessary for individual self-defense – what *Heller* called the “core lawful purpose” of the Second Amendment. Restrictions on high-capacity magazines and assault weapons, the court of appeals held, do “not effectively disarm individuals or substantially affect their ability to defend themselves.” The Second Amendment, like the First Amendment, does not prevent lawmakers from enacting reasonable regulations that do not seriously interfere with the core right guaranteed by the Constitution.

The Supreme Court has clearly held that the Second Amendment preserves the right of law-abiding citizens to have a firearm in the home for self-defense. As both the historical tradition of the right to bear arms and the Court’s decision suggest,

reasonable and limited measures to enhance public safety that do not unduly burden that right are consistent with the Second Amendment.

Signed,

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Testimony of Shannon Watts
United States Senate Committee on the Judiciary
“What Should America Do About Gun Violence?”
January 30, 2013

Chairman Leahy, Ranking Member Grassley, and Members of the Committee, thank you for the opportunity to submit written testimony on the subject of What Should America Do About Gun Violence.

My name is Shannon Watts. I am the founder of One Million Moms for Gun Control. I founded this grassroots organization on Facebook on December 15, 2012, one day after the mass shooting at Sandy Hook Elementary School in Newtown, Connecticut. I am the mother of five children. I live in Indiana. Hearing the news that twenty six- and seven-year-old children had been gunned down at their school forced me to do something about the increasing gun violence in America. I acted out of heartbreak and compassion and a compelling need to create change.

Within four weeks—less than one month—more than 50,000 people have signed up with One Million Moms for Gun Control to support new gun safety laws. Eighty chapters of One Million Moms for Gun Control are now spread across the United States. On January 26, 2013, One Million Moms for Gun Control co-sponsored the March on Washington for Gun Control. More than six thousand people marched on a bitterly cold January morning, in Washington, DC, while thousands more marched and rallied in cities across the United States from Boston, to Chicago, to Denver, to Indianapolis, to Seattle, and more.

The velocity with which the movement has grown in such a short time shows a very real desire for Americans favoring stricter gun safety measures to be heard as the true signal above the noise. The signal is this: we need stricter gun laws in this country. What we have now is not

working. The December 2012 shooting at Sandy Hook Elementary was the 16th mass shooting in the United States in 2012 alone. This one statistic alone should suffice to galvanize change.

Change is difficult. The Second Amendment admittedly grants broad rights to citizens to bear arms. No one within One Million Moms for Gun Control is looking to abridge the Second Amendment. What we seek instead are common-sense, practical limitations to the currently, seemingly unfettered right to bear arms that results in more and more deaths every year of innocent children. We believe that this issue is ripe for compromise.

Real change is needed. Real change, in the form of an assault weapons ban such as that proposed by Senator Dianne Feinstein; real change, in the form of tighter restrictions on the size of magazine clips limiting them to no more than 10 rounds; real change, in the form of extended background checks for all gun purchasers, whether they make their purchase at true brick and mortar stores, over the internet, or at gun shows.

I am not a politician. I am not a lawyer. I am simply a mother, and a citizen, and I am deeply concerned. I speak from the heart in language that every parent, every grandparent, every teacher and every American can understand. Enough is enough. The time has come for a common-sense, bipartisan effort to change the national debate about guns. Too many Americans are dying in their schools, in their movie theaters, at their political gatherings, at their colleges, at their supermarkets, and in their homes to justify maintaining the status quo.

After the shooting in Newtown, I had to do something. I could no longer sit idly by, quietly wringing my hands and wondering what could be done about the gun violence in America. I respectfully submit that now, you, Senators, must do something. Not one of us, as Americans, can afford to sit quietly any longer.



VERMONT FEDERATION OF SPORTSMEN'S CLUBS, INC
ORGANIZED 1875

affiliated with the National Rifle Association



January 29, 2013

Honorable Senator Leahy
437 Russell Senate Office Building
Washington, DC 20510

The Vermont Federation of Sportsmen's Clubs is an organization of clubs. We take gun safety very seriously, which is why the federation invests so much time in the training of shooters/hunters, development of ranges, training programs, and enactment of pertinent laws and regulations.

There are several factors that play a critical role in the complex problem of deterring violent crime. It is the experience of the federation that those who commit violent criminal acts do not obey laws. Hence, the federation has long held that laws which restrict the ownership of firearms by peaceful citizens do not deter crime and only serve to give advantage to the perpetrators of violent crime.

Vermont has long maintained a safe place to live, while still protecting the gun rights of peaceful citizens as acknowledged in the Second Amendment of the U.S. Constitution and the 16th Article of the Vermont Constitution.

The federation does not engage in the legislative or regulatory process in a hasty manner. We believe that laws created in haste, in the emotional aftermath immediately following a traumatic event, usually lack the sound public policy that society has a right to demand in its laws. We believe in a deliberate legislative process. Therefore, the federation will continue its long standing practice of offering our knowledge and experience to Vermont's federal elected officials.

Clint Gray,
President
Vermont Federation of Sportsmen's Clubs, Inc.



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VT Senator John Rodgers

Testimony submitted 2/1/13 for hearing record

U.S. Senate Committee on the Judiciary

"What Should America Do About Gun Violence?"

I am concerned with any loss of our second amendment rights. The VT constitution clearly states our right to bear arms for the defense of ourselves, families, property and state. We already can not posses assault weapons with automatic capability. We can own semi- automatic firearms. The AR platform is the most customizable and user friendly firearm ever built in my view. To say that hard working, law abiding, tax paying American citizens can not own them would be absurd. High capacity magazine are also important in self defense. If more than one person were to break into my house armed with handguns they would have at least six rounds each perhaps more. When it comes to protecting my family I would rather have 30 rounds than six. Millions of good people own these firearms and magazine. Because bad people do bad things with them is no reason to take them away from the rest of us. I will remind you that two of the worst tragedies that I can remember, The Oklahoma City bombing and 9/11, were carried out with no gun. Guns are not the problem and taking them away from good people will not fix the problem. If the Federal Government would deal with the problems- healthcare, failed drug policy, mental health, drug addiction, Poverty and the selling out of the American people by our Government and Business leaders to exploit cheap foreign labor and environmental standards- it would go a long way toward solving some of the violence issues. I ask you to oppose any further restrictions that would keep law abiding Americans from owning AR/military platform firearms and high capacity magazine.

VT State Senator John S Rodgers

